

# Hindu Law of Inheritance

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AS IN  
VIRAMITRODAYA  
OF  
MITRAMISRA

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## **ABOUT THE BOOK**

The institutes of various sages, as embodied in the Dharmasāstra, which form the primary source of the Hindu law, treat law in the widest sense of the term. In these institutes, no distinction was drawn between positive law on the one hand and laws of morality and religion on the other. But the distinction appeared gradually, some traces of it can be found in the institutes of Yājnavalkya, which devote a separate chapter, called *Vyavahāra*, to the positive law. This authority is held in the highest esteem by the Hindu lawyers. The Mitāksarā of Vijnāneśvara, which gives a systematic exposition of the law and is held to be the highest authority in almost all schools, professes to be but a commentary on Yājnavalkya. The most important part, the *Vyavahāra*, as in Yājnavalkya and Mitāksarā, comprises the sections on the law of inheritance and succession. The gradual development of the Hindu law, which was originally moulded by the institution of family, consisted of the recognition of individual rights and in the introduction of cognates as heirs in preference to more distant agnates.

The Viramitrodaya, composed by Mitramisra (17th cent.) is a well known treatise (*nibandha*) and has always been regarded as an authority of considerable importance by the High Courts and legal experts in British India. It presents in a very systematic way the views of Yājnavalkya and Mitāksarā and upholds their opinions, particularly of the latter against critics like Jimutavāhana. It also gives a satisfactory exposition of which may have been left doubtful by the Mitāksarā.

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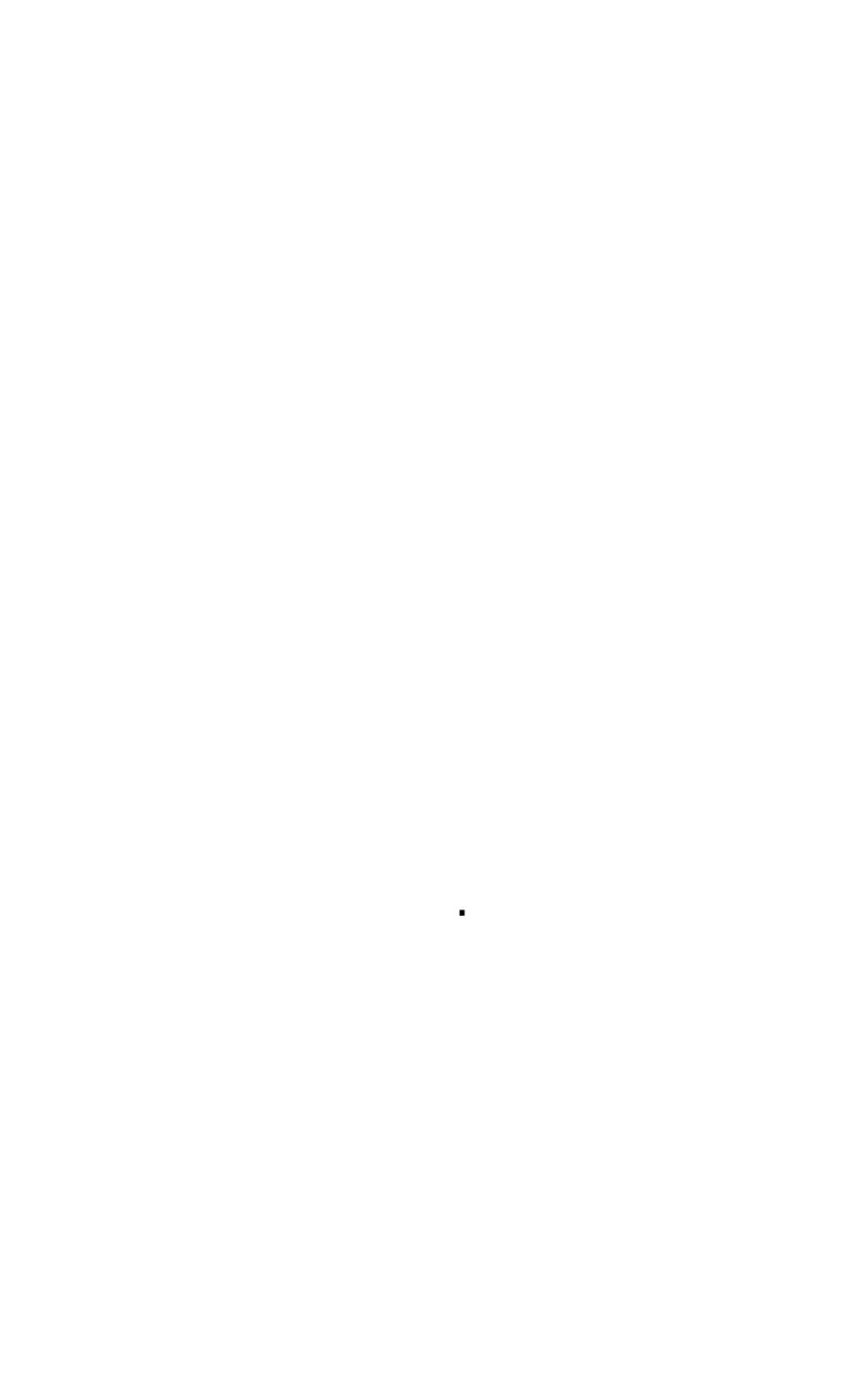
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Hindu  
Law of  
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MITRAMIŚRA



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**VIRAMITRODAYA**  
OF  
**MITRAMISRA**

Translated by  
**GOLAPCHANDRA SARKAR SASTRI**



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TO

The Honorable Sir Richard Garth, Kt., Q. C.,

CHIEF JUSTICE OF BENGAL,

THIS TRANSLATION

OF

THE VIRAMITRODAYA

IS,

WITH HIS LORDSHIP'S PERMISSION,

RESPECTFULLY DEDICATED

BY HIS HUMBLE SERVANT,

THE AUTHOR.



## P R E F A C E.

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THE Institutes of the various sages, which form the primary source of the Hindu law, treat of Law in the widest sense of the term. The rules embracing the religious rites and ceremonies and the moral duties of the different classes of the community, for the enforcement of which mere religious sanctions are prescribed, and the rules of positive law are laid down without any distinction. These rules are believed to be of divine origin ;—a belief, not peculiar to the Hindus, but common to all nations who believe in the creation of man by God. In forming an adequate conception of the creation, one would naturally be impressed with the idea that some knowledge must have been originally revealed to man ; for without it, the condition of those first created, would be utterly helpless.

The comprehensive name of '*Dharma Sástra*' is applied by the Hindus to the records which embody the knowledge, believed by them to have been communicated by God to man. The *Dharma Sástras* are divided into two classes,—the *Sruti* and the *Smriti*. The former comprises the four Vedas consisting of *Mantras* and *Brahmanas*, and the *Upanishads*, and is believed to record the very words revealed by the Deity. The *Smriti* comprehends the precepts of divine origin, not embodied in the words of the Deity himself, and includes the Institutes of the sages and certain works on medicine, music, the

grammar of the Sanskrit language and certain other subjects.

The Hindu writers appear to be divided in opinion as to the origin of the *Smritis*. According to one view the knowledge embodied in them had been originally communicated to Manu who taught it to his disciples, and from them it was handed down traditionally from preceptor to disciple until its purport as *remembered* was recorded, but not in the language in which it had been originally delivered. Another theory is, that at the periodical destructions of the world, the *Sruti* alone is preserved, and everything else is lost, and that Manu who is immortal, comes forward on each occasion to teach the laws *remembered* by him. But it will be observed that neither of these theories offers a satisfactory explanation of the existence of the Institutes of law promulgated by the different sages, inasmuch as all these sages are not supposed to have derived their knowledge from Manu himself. Hence a third theory is put forward, that the rules set to the first-created by God were strictly observed by them and their descendants in the *Satya Yuga* or the age of Truth, and that the customs and usages which were observed by them in obedience to the *remembered* commands of God, formed the primary source from which laws were deduced by the sages and consolidated and embodied in the Institutes. This view is consistent with the doctrine that an immemorial custom is presumed to be founded on *Sruti* or revelation, and as such has the force of law, provided it is not expressly disapproved in any of the *Sastras*.

Although, according to modern notions, the method pursued by the sages, in laying down their laws without drawing any distinction between moral and legal obligations, may appear unphilosophical, still it is to be observed that so long as a divine origin of the laws is believed

in, the legal, moral and religious sanctions would all act with equal force upon the minds of men, and so there would be no real difference between them. It is only when the faith in the efficacy of religious ceremonies loses its grasp on the mind of the community, and the non-observance of the rules of morality and religion begins to be excused as a venial offence, not even meriting the punishment of excommunication, that the distinction between legal and religious rules becomes wide and apparent.

The precepts laid down in the *Sástras* are divided by the commentators into several classes. The proper object of the *Sástras* according to them, is to teach of things that lie beyond the scope of reason. What men would do or refrain from doing of their own accord from purely human motives, need not be laid down by the *Sástras*. Where a precept enjoins men to do a certain thing, when no reason could be suggested for doing it, it is called an *utpatti vidhi* or injunction. When a precept forbids men to do what they may do under the natural impulses, it is called a *nishedha* or prohibition. But a precept regarding what men may do, of their own accord, may come within the scope of the *Sástras* if it enjoins that act at a particular time or place. Such a precept is called a *niyama vidhi* or restrictive injunction. There is a third kind of precept called *parisankhyá vidhi*, which is an injunction in form, but a prohibition in purport. As for instance, "Man shall eat the flesh of the five clawed animals." This cannot be an *utpatti vidhi*, for men may do the same of their own accord; nor can it be a *niyama*, as no time or place is specified for compliance with the precept. The meaning therefore is taken to be, that man shall not eat the flesh of any other clawed animal than the five specified ones. When the *Sástras* lay down a precept which is neither an *utpatti vidhi* nor a *nishedha* nor a *niyama* nor a *parisankhyá*, or a precept which embodies what has been declared in another

precept or what may be deduced from another precept, it is called an *anuváda* or a superfluous precept that need not have been laid down.

Some of the later commentators hold that the *Sástras* in so far as they deal with positive law, are generally superfluous, inasmuch as the rules of positive law are deducible from reason, or in other words, from a consideration of what best conduces to the welfare of the community and suits the feelings of the people. The reason why positive laws have been laid down in the Institutes is then explained by saying, that they were intended to guard the unthinking from falling into error.

It has already been said that in the Institutes of Hindu law no distinction is drawn between positive law on the one hand and laws of morality and religion on the other. But it is to be observed that one of the principles on which that distinction is based at the present day, is wanting in the Hindu idea of Law. According to the modern view, positive laws are rules of conduct set by political superiors to political inferiors, whereas according to the Hindus, laws of every description emanated from the Supreme Being himself. The idea of a political superior amongst the Hindus did not carry with it the power of making laws for the guidance of the community. The function of the king, according to the Hindu notion, is to protect the country from foreign invasion, and to see that the laws are observed, but he is, equally with his subjects, bound to obey the self-same laws. It would have been humiliating to the pride of the intellectual aristocracy of the Bráhmans to concede to a king the power of making laws for their guidance.

But notwithstanding the want of the above feature in the Hindu notion of Law, it came to be noticed that obedience to laws of all descriptions could not be enforced by the king. A distinction therefore developed itself in

the body of the Hindu laws. In the earlier Institutes, we find no sort of method or arrangement: all kinds of rules are mixed up together. In the Institutes of Yájnavalkya, however, which is admittedly a later work, some trace of a distinction begins to be perceived. It adopts an improved arrangement, devoting a separate chapter to what may well correspond with positive law. This code is divided into three chapters. The first is the *A'chára* or ritual, which treats of the initiatory ceremonies, the duties of the different castes, the domestic and social usages and the rites of purification and sacrifice. The second chapter is called *Vyavahára* or litigation, which embraces adjective and substantive law. The third is termed *Práyaschitta* or expiation, which treats of the religious sanctions, and the mode in which sin incurred by the violation of rules is purged off. The Institutes of Yájnavalkya have, besides, improved the Hindu law on many points, of which one may be noticed here, that the cognates who are not recognized as heirs by Manu and other sages, are for the first time introduced by Yájnavalkya in the category of heirs.

Although Manu is theoretically said to be entitled to the greatest respect, still practically speaking, Yájnavalkya appears to have been held in the highest estimation by the Hindu lawyers. The *Mitákshará* which gives a systematic exposition of the Hindu law, and is held to be of the greatest authority in almost all the schools, professes to be but a commentary on the Institutes of Yájnavalkya, though it cites texts of other sages to support the doctrines propounded in it. It appears that there were other digests compiled previously, but all of them were replaced by the *Mitákshará*. This treatise however being, as its name indicates, a very concise one, the law enunciated in it, came to be differently understood by different persons. Thus arose various other commentaries which have concurrently with the *Mitákshará*

considerable weight in the schools of law by which they have respectively been adopted. Of all the later digests, the Dáyabhága alone, which is recognised by the Bengal School as of the highest authority, is, on many important points, opposed in doctrine to the Mitákshará. But nevertheless this treatise, excepting in so far as it has been modified by the Dáyabhága, may still be regarded as an authority for the Bengal School as well.

Some of the doctrines of the Mitákshará which are laid down in clear and unmistakeable language were attacked by the Dáyabhága and other treatises, and the reasoning by which they were arrived at, was criticised and impugned. A vindication therefore, of the doctrines of the Mitákshará would naturally be undertaken by the admirers of that treatise. This appears to be one of the objects for which the Víramitrodaya came into existence. It examines copiously the arguments by which the doctrines of the Mitákshará were assailed, exposes their fallacy and, when necessary, puts forward reasons to support the principles laid down in the Mitákshará. It exhibits a strong feeling of antagonism to the Dáyabhága, and omits no opportunity of exposing its errors of reasoning. The Víramitrodaya has, however, on several points dissented from the Mitákshará, and although it serves as the ablest vindication of the doctrines laid down in that treatise, it is in itself an independent work giving a complete and accurate digest of the Hindu law.

The various commentaries or digests of the Hindu law which maintain conflicting doctrines, all profess to interpret the laws that are laid down in the Institutes of the sages. They do not however, appear to have been intended to have merely local authority, such as generally speaking, they now possess. The reason for the adoption, in different parts of India, of particular treatises as containing authoritative expositions of the law, appears to be, not that

the arguments by which their peculiar doctrines are maintained were thought very cogent, but that the doctrines themselves were suited to the feelings of those who adopted them. The process of development seems to have been that a change in a particular point of law being considered desirable, by reason of a change of feelings occasioned by altered social conditions, some learned pundit attached, it may be, to the court of a king, undertook to establish the foregone conclusion by the authority of the texts of the sages.

The Hindu law was systematized at a time when society was composed of joint families, the constitution of which, though resting on a natural basis, was to a great extent artificial. A joint family, very naturally consisted of individuals connected by blood, but at the same time it excluded the cognates, however nearly related, and included strangers by marriage and adoption. An individual, as such, was not originally recognised as a member of society, but as belonging to a certain *gotra* or family. And though the family divided and subdivided itself into smaller groups, such as *samánodakas*, *sakulyas* and *sapindas*, still all these were connected by a great many ties, above all, by the tie of a local union. It was only when the smaller groups or individuals left the original seat of the family, and migrated to distant places, that the strong family feeling or clan feeling began to abate, and the natural tie of consanguinity became stronger, and importance began to be attached to the cognates.

The gradual development of the Hindu law which was originally moulded by the institution of families may thus concisely be stated to consist in the recognition of individual rights and in the introduction of cognates as heirs, and of nearer cognates as heirs in preference to more distant agnates.

The principle underlying the Hindu law of inheritance would appear to be the same as in every other system of Inheritance, namely, the common principle of natural love and affection, varied, of course, by the peculiar circumstances of each case. It has, however, been asserted by the highest authorities that the doctrine of spiritual benefit is the key to the Hindu law of inheritance. But with the greatest deference to them, it may be observed in the first place that no trace whatever can be found of such a doctrine in the *Mitáksharā*. The author of the *Dáyabhága* does, no doubt, for the first time introduce that doctrine, which is more or less made use of by the later writers according as it suited their purpose ; but the doctrine itself is used in the *Dáyabhága* not for the purpose of determining the right of inheritance, but for the purpose of ascertaining priority, as regards the order of succession, of those who are recognized as heirs in the three fundamental texts of *Manu*, of *Vishnu* and of *Yájnavalkya* respectively. The principle enunciated in the *Mitáksharā* is, that succession is determined by propinquity ; whereas the author of the *Dáyabhága* maintains, that propinquity is not alone the criterion of succession, but in addition to it the capacity for conferring a comparatively greater amount of spiritual benefit is to be taken into consideration ; and the order of succession laid down by him, which is at variance with the *Mitáksharā* in many points, especially in the preference given to certain cognates, is justified by him on the principle of spiritual benefit. But it should be observed that a clear and consistent principle of succession cannot be deduced from the various references to the doctrine of spiritual benefit, in the *Dáyabhága*, so as to enable us to decide a question of disputed succession that has not been especially dealt with by the author himself; in such cases the difficulty of determining which of two persons confers the greater

amount of spiritual benefit, remains unsolved. The Hindu idea of honouring the deceased by offering oblations of food and libations of water appears to be a very catholic one. The Hindus present these offerings to some of their ancestors by name, and to others generally, as well as to the spirits of all that ever inhabited this globe. It is a debt of gratitude paid by a Hindu to all from whom he inherits the world as it is, and especially to those from whom he derives the greatest amount of secular benefit. This will be clear to those who are conversant with the ceremony of *Párvana Sráddha*.

It would appear that the theory of spiritual benefit and the law of succession are both of them based on one and the same principle of natural love and affection. The *sapinda* relationship, as explained by the author of the *Dáyabhágá* and other commentators, shows forth in a glaring light the strength of the joint family union, which forms the principle of the *Mítakshará* law of survivorship. Those who may live together in this world as members of a joint family, become united in the next as *sapindas* or as it were members of a celestial joint family. It is by a strained construction of the term *sapinda*, that the author of the *Dáyabhágá* attempts to include some of the cognates under it, with a view to support their preferable position as maintained by him. And the critical reader will find that his exposition of the doctrine of spiritual benefit in tracing out the order of succession is far from satisfactory. Some of the inconsistencies of the *Dáyabhágá* on this point are noticed in the *Víramitrodaya*, although the author of that treatise himself sometimes invokes the principle of spiritual benefit in establishing some of his positions.

The *Víramitrodaya* was, as the author himself says, composed by Mitra Misra under the direction of Víra Siñha, a king. The name of the work indicates the history of its origin. It may also mean either "the rise of the

friend of Víra" or "the rise of the heroic sun" of law to dispel the darkness which gathered round many points of law. Following the arrangement of the Institutes of Yájnavalkya, the author divides his work into three books, namely, *A'chára*, *Vyavahára*, and *Práyaschitta*. The book on *Vyavahára* or litigation again is subdivided into four parts. The first, treats of the constitution of courts and the law of procedure; the second, deals with the law of evidence and ordeals; the third, comprises the eighteen topics of litigation; and the fourth, which is a very short one, deals with cases in which the king is the plaintiff, and to a certain extent corresponds with the present criminal law. The portion translated in the following pages deals with the law of succession and inheritance, and is called *partition of heritage*,—one of the eighteen topics of litigation, occupying more than a fourth of the book of *Vyavahára*. Like the *Mitákshará* it shows great respect for the authority of Yájnavalkya, whom he always quotes under the title of *Yogisvara* or 'the lord of sages'.

The Víramitrodaya has always been regarded as an authority of considerable importance. In *Gridhari Lall Roy versus The Bengal Government*, the Lords of the Judicial Committee observe,—"That question, however, is not to be governed by the *Mitákshará* alone. Adhering to the principles which this Board lately laid down in the case of *The Collector of Madura versus Moottoo Ramalinga Sathupathy*, their Lordships have no doubt that the *Viramitrodaya*, which by Mr. Colebrooke and others is stated to be a Treatise of high authority at Benares, is properly receivable as an exposition of what may have been left doubtful by the *Mitákshará*, and declaratory of the law of the Benares school."

In the arrangement of the present work, I have followed the suggestions kindly made by the Honorable Justice Rameschandra Mitra. The division into chapters, parts,

sections &c., not found in original Sanskrit works, has been frequently introduced by translators for convenience of reference; though this has sometimes led to the mistake that there are verses in the original corresponding to the number of paragraphs. These works are all written in prose, and there is nothing in them which may be taken to resemble the sections of a statutory enactment. The division into small paragraphs again is very misleading, since one might fancy them to be complete in themselves, whereas in the generality of instances they may often be only isolated links in a long chain of argument. I was therefore advised to divide the work in such a way as to prevent any mistake of that kind.

I have adopted the language of Colebrooke in translating many of the texts of the sages, and compared West and Bühler's translation of the Chapter on *Stridhana* with mine.

For the convenience of those who may wish to make occasional references to the original, that portion of the original Sanskrit, of which the following is a translation, is printed at the beginning of the book.

I am grateful to the Syndicate of the Calcutta University for having offered to contribute one thousand rupees from the Tagore Law Fund towards the expenses of the publication of this work; and to the Honorable Justice Louis S. Jackson, C. I. E., the Honorable Justice William Markby and the Honorable Justice Rameschandra Mitra, who have evinced a kind interest in the preparation of this work.

My best thanks are also due to some of my friends, especially to Babu Sríschandra Chaudhuri, M. A. and Babu Indranáth Bandyopádhyáy, Vakils of the High Court, from whom I have derived considerable assistance.

G. S.

HIGH COURT,  
The 5th September, 1879.



# वीरमित्रोदये

व्यवहाराध्याय

विभागाख्यव्यवहारपदम् ।

— ♦ —

सरकारश्रीगोलापचन्द्रशास्त्रिणा

संस्कृतम् ।

— — — — —

कलिकाताराजधान्याम्

वप्टिष्ठ मिश्नाख्ये यज्ञालये मुद्रितम् ।

ई० १०७८ ।



# वीरमित्रोदये

व्यवहाराध्यार

## विभागाख्यवहारपदम् ।

### CHAPTER I.

1. यत्र मन्वादिवचनव्याख्यासु बज्जधा बुधाः ।  
विवदने दायभागः स प्रबन्धेन वर्णते ॥

2. तक्षश्चायमाह नारदः । विभागोऽर्थस्य पितॄस्य पुत्रैर्यत्र प्रकाशयते ।  
दायभाग इति प्रोक्तं तद्विवादपदं बुधैरिति ॥  
पितॄोरयं पितॄ इति कृतैकश्चेषात्पितॄशब्दाद्यत् । अये मातृधनस्यापि विभाग-  
कथनात् ।

पितॄस्य पुत्रैरिति च इयमपि सम्बन्धिमात्रोपलक्षणम् । पलीयादिनान्वेषामपि  
भर्त्तादिधने तन्निरूपणात् ।

अतएवोपक्रमे मनुना पितॄादिपदं नोपाक्षम् । एष खोपुंसयोरक्तो धर्मो वो  
रतिसंहितः । आपदयपत्प्राप्तिर्थं दायधर्मं निवेदत्वेति ॥

दायधर्मोऽप्यत्र विभागरूपोऽभिप्रेतलस्यैवाये लक्षणकथनपर्वकं निरूपणात् ।  
उद्देश्यावसरेऽपि खोपुंधर्मो विभागस्यैति तस्यैव विवादपदत्वेनोहृशात् । अतएव  
वाये यावत्सम्बन्धिधनविभागमेव प्रदर्शितवान्मनुः ।

3. दायशब्दस्यायं खामिसम्बन्धमात्रद्वये खत्वन्तर्पौ वदति । सथा च  
गिरघट्टाकारः । विभक्त्यं पितॄद्वयं दायमाङ्गमनीविज्ञ इत्याह । अत्रापि पितॄपदं  
सम्बन्धिमात्रोपलक्षणमन्यत्रापि दायशब्दप्रयोगात् । विभक्त्यं विभागार्हमित्यर्थः ।  
अन्यथैकपुत्रादिखासिके विभागभावादायशब्दवाच्यता न स्यात् ।

यत्तु जीमूतवाहनेन दीयत इति शुत्यर्था दायशब्दे ददातिप्रयोगस्य गैरिकाः  
मृतप्रदत्तिलादिस्तत्वनिवृत्तिपूर्वकपरखत्वोत्पत्तिफलसाम्यात् । न तु मृतादीनां तत्र  
त्वागोऽल्लिः । तत्र पूर्वद्वयस्यामिसम्बन्धाधीनं तत्त्वान्योपरमे यत्र इष्टेन्द्रज्ञस्तत्र तत्र  
गिरघट्टे दायशब्द इत्युक्तं ।

तत्र सुन्दरम् । निरूप्तवाङ्गीकारे दायदातिशब्दयोर्गैरिकालोपन्यासान्तर्यक्तात् ।  
सर्वथाऽवयवार्थराहिते हि निरूप्तं । न च योगरूपलम् अवयवार्थवाक्षस उपर्ये-

बोपन्नासात् । गौणमवयवार्थं परिकल्प्य तद्वीकारस्य निष्ठुयोजनेऽप्यक्षेत्राभ्यत्व-  
मनुभवविरोधो व्याघ्रात्म्भूतः । तत्वाभ्योपरम इति च अनगतिपि खलस्तैक्ष्मादविष्ट-  
माखलादव्यापकम् ।

4. विभागशब्दस्वनेकस्त्राव्यानां ब्रह्मसमुदायविषयाणां तत्तदेकदेशे व्यवस्थापने  
शक्तः । अतश्वैकपुचादीनां पित्रादिधनस्त्राव्ये विभागशब्दाप्रयोगो दायोजने लभ्य-  
इत्येव च प्रयोगः । यत्रापि चैकं दासीगवादि उक्तसाधारणं तत्रापि तत्त्वालविशेष-  
नियतदास्यदोऽनादिना तस्य तस्य स्वत्वाभ्यनादस्त्वयेकदेशस्त्राव्यवस्थापनरूपो वि-  
भागशब्दार्थः । अतश्व । एकां स्वीं कारयेत् कर्म यथांशेन गृह्णे गृह्णे इति । उक्तव्य  
कूपवायव्यस्त्रवनुसारेण गृह्णते इति । युक्त्या विभजनीयं तदन्यथानर्थकम्भवेदिति ।  
च उद्देश्यादिवचनेषु वस्त्रमाखलीया तदुपपादविष्टते ।

5. स च दायो द्विविधोऽप्रतिबन्धः सप्रतिबन्धस्त्र । पुचादीनां पित्रादिधने  
पुत्रत्वादिनैव सत्यपि खामिनि पित्रादौ जन्मनैव खलोत्पत्तेः स तेषामप्रतिबन्धो दायः ।  
खामिसद्वावस्थाप्रतिबन्धक्षात् । यस्तु विभक्तस्यासंख्यिनोऽपुचस्य मृतस्य पितृ-  
आचादीनां तद्वरूपो दायः स सप्रतिबन्धः । खामिसद्वावस्थ्य प्रतिबन्धकस्यापगमश्व  
तत्र खलोत्पत्तेः ।

6. ननु सर्वैऽपि सप्रतिबन्धश्व दायः । खामिसद्वावे पुचादीनामपि जन्म-  
माचेव खलस्य वक्तुमश्वव्यात् ।

तथा हि । यदि जन्मनैव पुचादीनां पित्रादिधने खलं स्यात् तद्वृत्तप्रमाणस्य  
पुचादेतत् साधारणमिति तदनुमतिं विना ब्रह्मसाधेष्वाधानादिमु पित्रादीनामधिक-  
कारापत्रौ जातपुचः खलाकेशोऽप्युग्मीनादधीतेति अुतिविरोधः ।

7. किञ्च । विभागात् प्राक् पित्रादिप्रसादव्यवस्थाविभाव्यत्ववचनं व्यर्थं  
स्यात् । तद्भिन्नं पित्रा पुचान्सरानुमत्या यदि इत्तं सर्वैरेव इत्तमिति विभागप्रायभावा-  
देव प्रतिषेधोऽनर्थकः । अनुमत्या तु साधारणव्यवस्थ्य दानमेव न सम्भवतीति  
पित्रादिप्रीतिदत्तत्वादिवाचो युक्तिरयुक्ता ।

8. एवं पुचाद्यनुमतिमन्तरेण खलादीनामपि भर्त्तादिभिः प्रीतिदानस्यासम्भ-  
वात् तदनुमतौ तु तेरपि इत्तत्वात् । भर्त्ता प्रीतेन यद्दत्तं स्त्रियै तस्मिन् वृत्तेऽपि तत् ।  
सा यथाकाममन्त्रीयाहृदादा खावराद्वते इति ॥ वचने यथाकाममन्त्रीयाहृदादेत्वने-  
गाविभाव्यत्वं भर्त्तप्रीतिलवस्थ्य यदभिहितं तदपि व्यर्थम् । न चेदमविभागवस्थायां  
प्रीतिदानं तस्य चाविभाव्यत्वं न प्रतिपादयति किन्तु खावराद्वते यदत्तमित्यव्यया-  
दिभागोत्तरमपि भर्त्ता स्त्रियै खावरं न प्रीत्वा देयमज्ञानाहृतसपि तेन पुचादिभि-  
रपद्वल विभजनीयमस्त्रावरन्तु न प्रत्याहृत्यमित्यनुवादमाच्रम् । खावरस्य स्त्रियै  
प्रीतिदानप्रतिषेधमाच्रम् तात्पर्येष्व वेष्टयतीति इत्यनीयम् । तथान्यव्यस्य व्यवहितयोर्जना  
प्रसङ्गेनायुक्तत्वात् । खावरप्रीतिदानप्रतिषेधमाच्रमात्पर्यवृत्त्वेऽन्याशस्यानुवादमाच्रम् व्यर्थ-  
त्वापरपर्यायस्यापद्वते ।

9. अथ । मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः । स्थावरस्य तु सर्वस्य न पिता न पितामहः ॥ तथा । पिण्डप्रसादाहृष्ट्यन्ते वस्त्राण्यभरतानि च । स्थावरस्य न भृष्ट्येत प्रसादे सति पैटक इति ॥ वचनमवश्यं विभागप्राक्तालीनस्थावरप्रसाद-दानप्रतिषेधपरं वाचं मणिमुक्तादिप्रसाददानानुमतिपुरःसरं तत्रतिषेधाभिधानात् । अन्यथा तस्यानुवादमात्रलेन वैयर्थ्यापत्तेः । तथा च अनन्ता पुच्छादीनां स्थावरामधिमुक्तादिषु तदनुमतिमन्तरेणापि इने पितुः स्थातन्त्रग्रम् । स्थावरे तु तदनुमतिवैति विशेषे इति वचनद्वयार्थस्य वाच्यत्वाङ्गमना स्थावरामायातोति । मैवम् । तस्य पितामहोपात्तस्थावरविषयत्वात् । अतीते पितामहे तत्त्वाभ्यनाशातिप्रापुच्छयोः साधारणे तदीयत्वस्त्वेऽपि स्थावर एव पुच्छानुमत्यपेक्षा मणिमुक्तादौ तु नेति तदर्थात् ।

10. यत्तु गौतमवचनं उत्पत्त्येवार्थस्थामित्यं काभते इत्याचार्या इति । अनन्तः स्थावरेतुले मिताक्षराकृता प्रमाणत्वेनोपन्नस्य तद्वायभागतस्वकृता आख्यातमेव । पिण्डस्त्वोपरमे तच्चन्यत्वस्य इतेत्तुलेनोत्पत्तिमात्रसम्बन्धेनान्यसम्बन्धाभिकेन जनकाधने पुच्छाणां स्थामित्यात्तद्वानं पुच्छो काभते नान्यः सम्बन्धीत्याचार्या मन्त्रन्त इति । न तु पिण्डस्त्वे विद्यमानेऽपि तत्र पुच्छस्त्वमिति तदर्थः । नारददेवजवधनविरोधात् । पितर्थ्यूर्ध्वं गते पुच्छा विभजेयुर्धनमितुरिति नारदः पितुर्धनमित्याह अन्यथा धनं विभजेयुरित्येवावश्यत् । पितर्थ्युपरते पुच्छा विभजेयुर्धनमितुः । अस्तान्यं हि भवेदेवा निर्देवे पितरिं क्षिते, इति ॥ देवलोऽपि पितुर्धनमित्युक्तोसरार्जेनस्तान्यं हीति स्यलुमेव तेषामस्त्वतं तत्र इतुलेनोत्तमवान् । निर्देवे पातिलादिस्त्वापगमकरोद्दरहिते । मनुरपि । ऊर्ज्जं पितुर्ज्ज मातुर्ज्ज समेव भातरः समम् । भजेन् पैटकं रिक्षमनीशास्ते हि जीवतोरिति ॥ जीवतोर्मातापित्रोत्तद्वाने पुच्छामस्तान्यं व्यक्तमेवाह ।

11. यत्तु शङ्खजिखितावाहतुः । न जीवति पितरि पुच्छा रिक्षमजेन् । यद्यपि स्थाम्यस्वादधिगतन्तरेनहीं एव पुच्छा अर्थधर्मयोरस्थातन्त्रग्रादिति । सूति-चन्द्रिकाकारेण च आस्ताम् । यद्यपि तैः पुच्छैः स्त्रीयजननः पञ्चादनन्तरमेव पिण्डधने स्थाम्यमधिगतं ग्रास्तं तथापि जीवति पितरि तद्वानं तदिच्छां विना न विभजे-रक्षर्थधर्मयोरस्थातन्त्रग्रात् पिण्डप्रतन्त्रग्रादिभागकरणेऽनहीः पुच्छा इति । तेनानेन वचनेन अनन्ता पुच्छादीनां पित्रादिस्त्वामिकधने स्थामिति तदपि न । मण्डादि-वचनानां बङ्गनामस्थाम्यप्रतिपादकानामगुरोधेनास्यान्यथावर्णनीयत्वात् । वर्णितस्य कल्पतरौ । यद्यपि पञ्चादधिगतं पिण्डधनव्यापारनिरपेक्षैः पुच्छैर्विद्यादिभिरपाते धने स्थाम्यं तथापि तत्राप्यस्थाम्योवति पितरि किमुत पिण्डधने अर्थधर्मयोत्तेषां पितरि जीवत्वस्थातन्त्रग्रादिति ।

12. किञ्च । स्थाम्यैकसमधिगत्यन्यं तत्र च रिक्षयादिवचनानः स्थाम्य-इतुलेनानुक्तोर्ज्जनना, स्थाम्यप्रमाणवक्तमेव । अतद्व यथा भार्यादिवचनम् । भार्या पुच्छ दासस्य चयद्वाधनाः सूताः । यत्ते समधिगच्छन्ति यस्य ते तस्य तद्वनमिति ॥ पारस्तन्त्रग्रामाच्चप्रतिपादनपरं तथाऽस्थाम्यवचनान्यपीत्यपात्तम् । भार्यादिभृधग्रादिव-

चनैः कर्त्तनादिनाचार्यकलेन खामिले सिद्धे युक्तमस्तातन्त्रमाचपरत्वमव्यथा पुचादिषु  
धनसाध्येषु पुराणादिक्रुं तेषामधिकारित्वमपि विरुद्धेत् । अत तु प्रसुत यज्ञः  
खलहेतुत्वे प्रमाणाभावाद्यर्थमेवान्यथानेकवचनवर्णनम् ।

13. किञ्च यदि खलं जौकिकं स्यात् तदुपायानामपि जौकिकत्वात्  
खामी रिक्षक्यसन्विभागपरियहाधिगमेषु ब्राह्मणस्याधिकं लब्धं क्वचियस्य विजितं  
निर्विटं वैश्यमूद्रयोरिति गौतमवचनं अर्थमेव स्यादगुवादमाचत्वात् हि पाकादोदणो  
भवतीयादिशास्त्रं निष्प्रयोजनमनुवादमाचमुच्यते ।

तस्य हि वचनस्याध्यमर्थः । रिक्षयं दायः । ज्यायः प्रसिद्धः । सन्विभागो दाय-  
स्यैकदेशनिष्ठखामिलव्यञ्जको विभागः । परियहः पूर्वमपरेवात्मिकत्वात्माणा-  
दिसाधारणप्रदेशसन्विनिलकृत्यजाकाण्डादेः खीकारः । अधिगमोऽज्ञातखामिकत्व्य  
निधादेः प्राप्तिः । एतेषु खलहेतुषु सत्यु खामी भवति । जातेषु च जायते ।  
ब्राह्मणस्य लब्धं प्रतियहादिप्राप्तमधिकामसाधारणं रिक्षादथस्तु सर्वसाधारण्याः ।  
अधिकमित्युत्तरत्र सर्वत्र समध्यते । क्वचियस्य विजितं युज्विजयदण्डादिप्राप्तमसाधा-  
रणम् । वैश्यस्य निर्विटं क्षणिगोरक्षणादिभृतिलब्धम् । मूद्रस्य दिजमुश्रूषादिभृति-  
लब्धम् । निर्पूर्वस्य विशेष्टतिवाचकात्मम् । निर्विशेषो भृतिभोगयोरिति चिकाण्डाभि-  
धानात् । वैश्यमूद्रयहं ग्योपयात्क्षणादन्वेषामप्यनुलोमजप्रतिलोमजातानां द्रूताना-  
मश्वसारथ्यमित्याद्याशनसादिप्रतिपादितं वृत्तिजातं निर्विटशब्देन संग्रह्यते । सर्वस्य  
भृतिरूपत्वात् ।

14. किञ्च योऽदत्तादायिनो इत्याङ्गिष्ठेत ब्राह्मणो धनम् । याजनाध्यापने-  
नापि यथा स्वेनलघूयैव सः ॥ इत्यदत्तादायिनस्त्रौरस्य इत्याद्याजनादिस्वरूप्यापि धन-  
मर्जयतो दण्डविधानमनुपपत्तं खलस्य जौकिकत्वे । खलाचार्ययतो निरपराधत्वात् ।

ममते तु शास्त्रैकसमधिगम्यत्वात् खलस्य चौरदण्डकायाजनादावेतहचनादेव  
खलानुवादकत्वात्तदिधानमुपपत्तरम् ।

15. अपि च मम खलमनेनापहृतमिति अपदेशो न स्यात् खलस्य जौकि-  
कत्वे । अपहर्तुरेव तत्र खलात् ।

ममते तपहृतरस्य निविङ्गलेन खलानुत्पादकात्मादुपपत्तोऽयं अपदेशः ।

16. यदि च सुवर्णत्वादिकमिव तत्र खलमपि प्रत्यक्षप्रमाणात् तर्हि सुवर्ण-  
त्वादौ यथा न सन्देहलक्षणात् खलिदमस्य वेत्रपि सन्देहो न सामिग्रीतत्वात् ।  
इदमेवोत्तां संयहकारेण । वर्तते यस्य यज्ञस्ते तस्य खामी स यज्ञ न । अन्यस्यामन्यज्ञस्ते एव  
चौर्यादैः किं न दृश्यते । तस्माच्छान्ततये तस्य खामी स यज्ञ न । अन्यस्यामन्यज्ञस्ते एव  
मेतेन न युक्तं वल्लमन्यथा । विदितोऽर्थागमः शास्त्रे तथाऽवर्ति पृथक् पृथगिति ॥  
शास्त्रे खामी रिक्षक्ययेत्वादौ साधारणासाधारणस्योऽर्थागमः खलोपायः पृथक्  
पृथगवर्तितस्याद्य विदितो जौकिकत्वे तच्छान्तर्यज्ञं स्यादिवर्णः । अन्यत् स्पष्टम् ।  
यथावर्णमिति सूतिचित्रिकार्यां पाठः । पूर्वपाठस्तु मदगरजायित्वितः ।

17. अथ यदस्य यथेष्टुं विनियोग्यं तत्स्य स्वमिति लोकप्रसिद्धेर्यथेष्टु-  
विनियोग्यतं स्वत्ममिति चौर्बीद्यर्थिते नातिप्रसङ्गस्तत्र चौरादेर्थयेष्टुविनियोग्यता-  
भावादिनियोगकाले चासादिदर्शनात् । अतएव सम्बेदोऽप्युपपद्मः सुवर्णतादितुत्त्व-  
त्वाभावात् स्वत्स्य । मैवम् ।

असम्भवात् । शास्त्रेण सर्वस्य कुटुम्बभरणादौ विनियोगविशेषनियमादैच्छिक-  
विनियोगविषयत्वस्य कुञ्चायप्रसिद्धेः । तदप्याह संयुक्तकारः शङ्खोपन्नासपुरःसरम् ।  
न च स्वमुच्यते तद्यत् स्वेच्छया विनियुक्तते । विनियोगोऽत्य सर्वस्य शास्त्रेणैव नियम्यते  
इति ॥ अत्र पूर्वोर्ज्ञे शङ्खोपन्नास उत्तरार्द्धे तत्परिहारः ।

18. न च रिक्षादिवदुत्पच्यैवार्थस्वामित्वमिति गौतमवचन उत्पत्तेरपि  
जन्मापरपर्यायायाः स्वत्वेतुत्वोक्ते: स्वपि स्वत्स्य तदुपायानां शास्त्रैकसमधिगम्यते  
जन्मना पुचादेः पिचादिवने स्वत्मक्षतमेवेति वाच्यम् ।

तस्यानेकदूष्यैरन्यथाव्याख्यानस्य प्रागेवोक्तत्वात् । इदमेवाभिसन्वाय धारे-  
चरेणापि शास्त्रैकसमधिगम्यमेव स्वत्ममिति सिद्धान्तितम् ।

19. अपि च । जीवत्यपि पिचादौ पुचादेत्तद्दने जन्मना स्वत्वे तदनिष्ठा-  
यामपि पुचादीच्छयैव विभागः स्यात् । अखातग्नवचनाद्वैवमिति चेत् न । तथा  
सति दृष्टादृष्टविरोधमात्रं भवेद्यवहारस्तु सिद्धेदेव । यथा पिचादिभिः सह पुचा-  
दिभिस्तुत्प्राद्यवहारे प्रवर्त्यमाने तेषां दृष्टादृष्टयोः श्रेयोविधातमात्रं गुरोः शिष्ये  
पितुः पुच इत्यादिवचनार्थं इति प्राक्प्रपञ्चितं तथाचापि स्यात् । अस्त्विति चेत्त  
सकलगिबन्धविरोधात् ।

20. क्षमित्यनैवेति प्राचीनग्रन्थविखनमपि जन्मनिबन्धगत्वात्प्रितापुचादि-  
सम्भवस्य पितृमरणस्य च तत्स्वत्वापगमेतुत्तेन परम्परया वर्णनीयम् ।

21. किंच । ऊर्ज्ञं पितृस्तेवादि मनुवचनं जन्मना पुचाणां स्वत्पक्षे जीवति  
पितृरि स्वपि पुचाणां स्वान्वे तदिष्ठया विना तदिभाग ऊर्ज्ञन्तु स्वेच्छयेति विभाग-  
निवेद्यार्थं प्रागिति वाचं तत्त्वान्यार्थं अखातार्थप्रत्यापत्तेः । न च पितृस्तरमकालविधा-  
नार्थं विभागविधानार्थं चेति युक्तम् । दृष्टार्थतादिभागस्योभयस्याप्यनुपपत्तेः । नापि  
नियमविधिर्विभागस्य एवं सह वसेयुर्वा पृथग् वा धर्मकाम्यया इति मनुना विकल्पा-  
भिधानात् । कालविधौ च पितृप्रमाणन्तरकाल एव विभागो नैभित्तिकस्य निभि-  
नानन्तर्याद्योऽयं स्यात् । जातेष्टुवच्चातप्राचीवियोगापत्तिस्त्रूपविशेषविरोधस्याचा-  
भावात् ।

22. अतो जीवतोः पितृत्वादौ स्वान्वं नास्ति किञ्चूपरतयोर्लयोरिति तत्त्वा-  
शीणस्त्रापनार्थं मन्वादिवचनं विभागस्तु स्वातन्त्र्यात्माजीन इच्छाप्राप्तोऽनुचयते ।  
तथा चैतद्वचनविरोधादपि न जन्मना स्वत्वं वस्तुं शक्यम् । उपरमवत्यतितत्वादिक-  
मपि पिचादिवचनाशकारबं वस्तते ।

तस्यात् पिचादिवचनाशकार तद्वने पुचादीनां स्वान्वं न तत्त्वात्मकाजीनमिति

**खाम्भादिसद्वावस्य सर्वत्र प्रतिबन्धकत्वात् सर्वोऽपि सप्रतिबन्धश्च दाय इति हैविध-  
मनुपपञ्चमिति ।**

23. अचोचते । यदि पित्रादिसत्त्वापगम एव पुण्डादीनां तज्जने सत्त्वं तर्हि  
निर्देषे पित्रादौ जीवति तेषां धनसाध्यै दिक्कर्मस्थलविकारप्रसङ्गे जातपुत्रः क्षमा-  
केशेऽप्नीनादधीतेवादिश्रुतिविरोधस्तुत्यः । न तु सकापोषकस्थितहेत्वाभाससमर्थित-  
सूत्वर्थानुरोधेन श्रुतिसङ्गेष्ठो युक्तः । आहितामादिवृप्तमयज्ञे पित्रादौ जीवत्यपि  
पुण्डादीन् प्रति तत्प्रवृत्तविशेषात् । सकापायाश्चिकशिष्टानां तदनुष्ठानदर्शनात् । जात-  
पुत्रक्षम्भाकेशपदाभ्यां वयोरुद्घानतिक्रमस्यैव विवक्षा न तु तयोरत्यस्तितयोः स्वरूपे-  
वेति विरोधाधिकरणे भाव्यवार्तिकादौ स्थितत्वात् । न च यथा पुण्डानुभवा पितु-  
र्भवमते तदधिकारस्तथा ममतेऽपि पुण्डादीनामपि पित्राद्यनुभवेति वाच्यम् । यतो  
इयोरपि मते पितुः स्वतस्य धने विद्यमानत्वात् स्वतत्वाग्रृपप्रधानविष्वसिरविहता  
भवन्मते तु पुण्डादीनां स्वतस्यैवाभावादनुभवेच्च स्वताजनत्वायाग्रादिप्रधानविष्वप्ति-  
रेव कथम् । वस्तुतस्यु पितुः पुण्डानुभवितरपि नायेच्छिता स्वातन्त्र्यात् । पित्राद्यनुभवितस्यु  
पुण्डादेशपेक्षिता पारतत्वाग्रादिवेतावान्विश्वेषो यथा स्त्रियाः स्वधनेनापीढापूर्णादि-  
व्रतादौ भर्त्रदेशज्ञमतिलक्ष्यतारत्नस्त्रवचनात् । अननुभवौ तु स्वतन्त्रः प्रत्यवायो वैमुख्यं  
वा कर्मणि न तु प्रधानस्वरूपाग्निष्वप्तिः । पित्राद्यनुभवौ स्वतोत्पादकत्वैतदनुरोधात्  
कर्म्यमानमलौकिकमशास्त्रीयच्च । तस्माच्चास्त्रैकसमविगम्येऽपि स्वते कर्त्तव्यजन्म-  
नोऽपि रिक्षादिवधनादधिगमादिपदेन संयह आवश्यकः श्रुतिस्मृतिपुराणशिष्टाचार-  
सिद्धस्य निर्देषे जीवत्यपि पित्रादौ पुण्डादिव्याद्यनुष्ठानाधिकारस्थानुरोधात् ।  
वस्तुतस्यु लौकिकमेव सत्त्वं लोके च जातमाचाकामेव पुण्डादीनां पित्रादिभने स्वाम्य-  
शब्दारोज्येषामपीति साधयिष्यामः ।

२४. यज्ञ पित्रादीनामनुमत्यवोग्यपुत्रादिसाधारणस्त्वे कथमनुमतिमन्तरे-  
साधारणादिकं स्थादित्युत्तं तदनुमतियोग्येभ्यपि पुत्रादित्य स्थातन्त्र्यात् पित्रादीनां न  
तदनुमत्यपेक्षा किमुतानुमत्यवोग्येभ्यिति परिहृष्टप्रायमेव । तदित्यिवकादेवाधिकारो-  
उवगम्यत इति त विज्ञानेश्वराधार्यः ।

**25.** अत्तोत्पर्यवार्थसामित्वमिति गौतमवचनस्य यज्ञीमूलवाइनरसुनन्द-  
नाभ्यां पारम्परिकोत्पत्तिस्त्वाहेतुत्वेन आख्यानं कृतं तदपि व्यर्थमेव ।

26. यत्तु इष्टवचनं तस्यापि स्फृतिचन्द्रिकोक्तायाख्यैव साधीयसी । कथपतस्त-  
आख्यायान्तु विद्याद्युपाताध्याहारेऽनुपस्थितभूयःपदोध्याहारः प्रसर्वेत । अमपदा-  
ध्याहारल्ल पृच्छत्वाद्याक्षेपोपस्थितेरख्याध्याहाराच नायुक्तः ।

27. तेज शुभप्रसूत्वसृत्वनुरोधाभ्यनुगारददेवजादिवचनानमेवास्तव्यपरत्व-  
वर्णनमचित्ततरम् ।

28. यदप्युत्तमं प्रीतिदात्याविभाष्यत्ववचनानि अस्माका स्वत्वाभ्युपगमेऽनुपपश्च-  
नोति । तदपि न । अनमत्वभिप्रायेषां स्वावरप्रीतिदाताभाष्यार्थीकरणार्थतयोपपत्ते ।

खांतक्षगादा पितुरनुमतिमन्तरेणापि तेन दक्षे स्थावरस्थतिरिक्तो पुचाणामविभाज्य-  
त्वमुच्यते ।

29. अतएव स्थावरे विशेषवचनम् । स्थावरं द्विपदस्त्रैव यद्यपि स्थयम-  
र्जितम् । असम्भूय सुतान् सर्वान् न दानं न च विक्रय इति ॥ मणिमुक्ताप्रबालानामि-  
त्यादिवचनन्तु जन्मना स्त्वपक्षस्त्रैवोपपन्नतरम् । न च पितामहोपात्तस्थावरमाच-  
विषयत्वमिति युक्तम् । न पिता न पितामह इति द्वयग्रहणात् । पितामहस्य हि  
खार्जितमपि पुचे पौचे च स्थयपि न देयमिति वचनं जन्मना स्त्वपक्षमयति । यथा  
परमते मणिमुक्ताप्रबालादीनां पैतामहानामपि पितुरेव स्त्वं तत् स्त्ररणात् नथास्ति ।  
मतेऽपि पुचादीनां तत्र जन्मना स्त्वे साधारणेऽपि पितुरानामधिकार इत्यविशेषः ।

30. तस्मात् पैठके पैतामहे च इव्ये पुचादीनां यद्यपि जन्मनैव स्त्वं । तथापि  
पितुरावश्यकेषु धर्मज्ञात्येषु वाचनिकेषु च प्रसाददानकुटुम्बभरणापदिमोक्षादिषु च  
स्थावरस्थतिरिक्तदद्यविनियोगे स्त्रांतक्षगमिति ध्येयम् । स्थावरादौ तु स्त्रार्जिते पित्रा-  
दिपरम्पराप्राप्ते च पुचादिपारात्म्भवं तुल्यमेव । स्थावरं द्विपदस्त्रैव यद्यपि स्थयमर्जि-  
तम् । असम्भूय सुतान् सर्वान् न दानं न च विक्रयः ॥ ये जाता येऽप्यजातात्म्भ ये च  
गर्भे व्यवस्थिताः । वृत्तिच्छ तेऽभिकाङ्क्षन्ति न दानं न च विक्रयः ॥ इत्यादिवचनात् ।  
अस्याप्यपवादो वक्ष्यते ।

31. यच्च स्त्वस्य शास्त्रैकसमधिगम्यत्वाच्छास्त्रे च जन्मनः क्वापि स्त्वलहेतुता-  
नामधिकारात् । कथं जन्मना पुचादीनां पित्रादिधने स्त्वस्त्रीकार इत्युक्तम् । तस्य  
शास्त्रैकसमधिगम्यत्वमभ्युपेत्यापि गौतमादिवचन उत्पत्तेरपि स्त्वलोपायत्वोक्तः परि-  
हतमेव प्राक् ।

32. वस्तुतस्य न स्त्वस्य शास्त्रैकसमधिगम्यत्वं युक्तियुक्तम् । सर्वथा शास्त्र-  
ज्ञानगम्यरहितानां प्रत्यन्तवासिनां स्त्रेष्ठादीनामपि समस्तमिदमन्यस्य स्त्रमिति व्यवप-  
देश्चलन्हातत्त्वं क्रयविक्रियादिव्यवहारो दृश्यते । तेनान्वयव्यतिरेकाभ्यां क्रयाद्युपायकं  
स्त्रामित्यनिरूपितस्त्वत्वमपि तैर्येष्वविनियोगार्हत्वरूपं पदार्थान्तररूपं वा प्रत्यक्षादि-  
प्रमाणादेवावगतमित्यवश्यं वाच्यम् ।

33. एतत्तर्कोपदुष्टोऽनुमानवाक्यप्रयोगोऽपि विज्ञानयोगिनोक्तः । स्त्वं ज्ञौ-  
किकां ज्ञौकिकार्थक्रियासाधनत्वाद् ब्रीह्मादिवदिव्यव्ययदृष्टान्तः । आहवनीयादीनां  
हि शास्त्रैकसमधिगम्यानां न ज्ञौकिकार्थक्रियासाधनत्वमस्तुति व्यतिरेकदृष्टान्तः ।  
तेनान्वयव्यतिरेको हेतुः । यद्यप्याहवनीयादीनामपि यागादिलौकिकक्रियासाधनत्व-  
मप्यत्ति । तथापि तज्ज्ञोपमाणाकामग्रादिरूपेण नाज्ञौकिकाहवनीयादिरूपेणेति न  
व्यभिचारः । इह तु सुवर्णादिरूपेण न क्रयादिसाधनत्वमपि तु स्त्वलैवेति । सुवर्ण-  
त्वादिनाऽभरणाद्यर्थक्रियासाधनत्वात् तथाथा ज्ञौकिकं रूपमेवं स्त्रत्वमपि सर्वानुगतं  
ज्ञौकिकमेव न श्वसेन क्रयादिक्रियानिर्वाहो ज्ञोके ।

34. न चैव स्त्रामी रिक्षेष्वादिस्तृतीनां ज्ञोकसिद्धार्थानुवादक्षेवेनार्थक्षा-

पतिरिति वाचम् । धर्माधर्मापयोगितया आकरणस्तावनादिवाचकात्वतदभावहृष्ट-साधुत्वासाधुत्वविवेकस्येव तस्योपपत्तेः । साधुशब्दाधिकरणे छोतदवस्थितं यत्प्राणीर्ग-चवहृतिर्गां लोकानामविविक्षं लौकिकमेव साधुत्वं शास्त्रेण विवित्ते न त्वलौकिकं साधुत्वं । साधुभिर्भाषेत इत्यादिविधावन्योन्याश्रयप्रसङ्गादित्यादि । एवमचापि ।

35. तथा च नयविवेके भवनाथः । लोकसिद्धस्वार्जनं जन्मादि अतेवा-निवृत्य प्रथमलोकधीविषयवस्थितं तद्विवन्धनार्था सृतिर्थाकरणादिस्मृतिवदिति । जन्मादीवादिपदेन क्रायादिपद्यहृणम् । आकरणादीवादिपदेन सङ्गीतरत्नपरीक्षासामु-द्रिकाणां ग्रहणम् । रागादीनामपि हि लोकसिद्धानामेवानभियुक्तान् प्रति विवेकार्थ-मेव तक्षकाकथनमित्युक्तं सृत्वधिकरणे आचार्यचरणैः ।

36. सामी रिक्षेत्रादिवचनन्तु प्रागेव आख्यातम् । रिक्षशब्दस्तु निष्प्रति-बन्धदायपरः संविभागशब्दस्तु सप्रतिबन्धदायपर इति मिताक्षरायां विज्ञानेश्वरेण आख्यातम् । सृतिचन्द्रिकाकृता तु रिक्षं पित्रादिधने पुचादीनां खामित्वापादकं जन्मैवेति आख्याय संविभागः पित्रादिधने विशेषनिष्ठलाभिलक्षणम्यादको विभाग इति संविभागशब्दो आख्यातः । तत्र खस्य सतो विभागात् खत्वहेतुत्वेन तत्प्रतिपाद-नानौचित्यात् । एकदेशव्यवस्थापनमात्रं हि खत्वस्य विभागेन क्रियते । सुखासुखु-हेतुत्वयहृणे सामिपदे वैरूप्यापत्तेः । अतेवाह मिताक्षरायां विज्ञानेश्वराचार्यः । विभागशब्दस्तानेकसामिक्षनविषयः प्रसिद्धो नान्यदीयविषयो न प्रहीणविषय इति । लोके पुचादीनां जन्मैव खत्वं प्रसिद्धतरमिति च ।

37. यदपि पली दुहितरस्तेत्रादिवचनं तदपि सामिसम्बन्धनिवन्धनानेकदाय-हृणप्राप्तौ लोकप्रसिद्धेऽपि खत्वे आमोहनिरासार्थम् । प्रायेण अवहारस्मृतीनां लोक-सिद्धार्थानुवादकालमिति सकलानिवन्धुभिरभिधानात् ।

38. नियतौपायिकं खत्वं लोकसिद्धमेवेति भगवतो गुरोरपि सम्मतम् । लिप्तानये हि दृतीये वर्णके इत्यार्जननियमानां क्रत्वर्थवे खत्वमेव न स्थात् खत्व-स्थालौकिकात्मादिति पूर्वपक्षासम्भवमाशृण्य इत्यार्जनप्रतियहृदीनां खत्वसाधनत्वं लोक-सिद्धमेवेति पूर्वपक्षः समर्थितस्तेन । न च इत्यार्जनस्य क्रत्वर्थवे खत्वमेव न भवतीति याग एव न संवर्तेत । प्रजापितमिदं केनापि । अर्जनं खत्वं नापादयतीति विप्रति-विद्म् इति यश्चेन ।

अस्यार्थस्तीकाण्डता विवृत एवम् । यदा इत्यार्जननियमानां क्रत्वर्थत्वं तदानिय-मानां खत्वोपायतामिदं शास्त्रं न बोधयति । क्रत्वर्थताबोधने आख्यत्वात् । तथा सति प्रतियहृदिप्राप्तस्य खत्वमित्यत्र प्रमाणाभावादेतेन च खत्वागात्मकायागासम्भवात् खत्वेदम् इत्यार्जननियमा भवेयुरिति पूर्वपक्षासम्भव इति इत्यार्थः । प्रजापित-मित्वायुक्तरक्षस्यार्थः । अर्जनप्रतियहृदेः खत्वहेतुताया लोकसिद्धत्वेन शास्त्रस्य तत्त्वावापादादियमानां क्रत्वर्थत्वेव तेन गम्यत इति न यागासम्भवो नियमानर्थ-शब्देति ।

सिद्धान्तेऽपि तेन स्वत्स्य जौकिकत्वाभ्युपगमेनैव विचारप्रयोजनमुक्तम् । अतो नियमातिक्रमः पुरुषस्य न क्रतोरिति । अस्याप्यर्थं एवं विवृतः । यदा ब्राह्मण-नियमानां क्रत्वर्थत्वं तदा नियमार्जितेनैव क्रतुर्न नियमातिक्रमार्जितेन ब्रह्मेण । न तु पुरुषस्य नियमातिक्रमदोषः पूर्वपक्षे । सिद्धान्ते तर्जननियमस्य क्रत्वर्थत्वाभावात् केवल-पुरुषार्थत्वादतिक्रमार्जितेनापि ब्रह्मेण क्रतुसिद्धिरप्रत्यूहा । पुरुषस्यैव तु नियमातिक्रम-दोष इति । अनेन नियमातिक्रमार्जितस्यापि स्वत्मभ्युपगतमन्यथा क्रतुसिद्धभिधान-विरोधात् ।

39. तच्चैवाधिकारणे कुमारिलखामिनोऽप्यचभवतः स्वत्वं जौकिकमिवेवाभिमतमिति । तच्चत्वार्जितं तत्त्वरत्नाभियोगभाजां सुलभमेव ।

40. अतश्ववाहू शास्त्रदीपिकायां पार्थसारथिः रागप्राप्तेत्वावर्जनं न शास्त्रीयम् । रागतस्य पुरुषार्थतया प्राप्तिः प्रत्यक्षेष्वैवार्जितं इत्थं पुरुषं प्रीत्यात् पुरुषार्थं विज्ञायते न तदनुभावेन क्रत्वेकाशेषतया शूक्रं विज्ञातुम् । तस्मात् पुरुषार्थं इत्थं क्रतुरपि पुरुषकार्यात्मामन्यतम् इति कार्यान्तरवत् क्रतावप्युपर्युज्यते इत्येतावान् विशेषः । न तु तस्यैवाङ्गं तथा सति जीवनलोपात् क्रतुरेव न संवर्तेति प्रघट्टकेन । अत्रार्जनस्य शास्त्रीयत्वं निरस्यता स्वत्स्य तदुपायानां जोक्तिद्वयं स्पष्टतरमेवोक्तम् । अन्यदपि तेनैवोक्तम् । तस्मात् पुरुषार्थं इत्यार्जनमेवच्च दृष्टार्थं भवति । नियमस्तु दृष्टाभावात् काममदृष्टार्थः स्यात् । अदृष्टमपि पुरुषार्थार्जनविषयत्वात् नियमस्य पुरुषगतमेव कल्यते । तेनासावुपायान्तरेऽर्जयन् प्रत्यवेतीति गम्यते इति ।

41. ततस्य स्वामीं रिक्षेवादिवचसां जौकिकमेव रिक्षादीनां स्वत्वोपायत्वं मनूद्य तदतिरिक्तोपायनिवृत्तौ तात्पर्यं नियमविधयेति नानर्थक्षशङ्कापि । द्विसाधनभोजनाश्रितदिङ्गनियमवत् । इत्यार्जनमेव क्रत्वर्थपुरुषार्थत्वविचारोदाहरणं नियमस्तु पूर्वपक्षद्युक्तियोपन्यस्तः । स एव तच्चोदाहरणमिवेव भद्रगुरुमतयो भेदः । स्वत्स्य जौकिकत्वं तूभयसम्मतमिति निष्कर्षः । तच्चदृष्टव्यभूषणादि तु तत्त्वाभियोगवतामाकारे एव अकां प्रस्तुतानुपर्योगादिह नोन्थते ।

42. एतेन चौर्यादिप्राप्तस्यापि स्वत्वं स्यादिति यत् संयहकारधारेश्वराभां स्वत्स्य जौकिकत्वे दूषणमभिहितं तदपि परास्तम् । चौर्यादिषु स्वत्वोपायत्वस्य जोक्तावप्रसिद्धेन्यस्य समिदं नास्येष्वैव अवहारात् । क्रयाद्युपायसन्देशादेव स्वत्वसन्देशोऽपीदमस्य वास्य बेवाकारको नानुपपदः । मम समनेनापहृतमिति न ब्रूयाद्यपहृतुंरेव स्वत्स्य जौकिकत्वे दूषणमभिहितं तदप्येतेगालूग-विशीर्णम् ।

43. यचोक्तं संयहक्षता । शास्त्रेण सर्वस्य तच्च विनियोगनियमवादयेऽविनियोगत्वत्वप्रस्तुतासम्भवः । इच्छ्या ज्ञापि विनियोगसम्भवादिति । तदप्यापाततः । नहि वयमैश्चिकविनियोगोपहृतत्वं ब्रूमोऽपि तु तदईत्वमाचम् । अन्यथा राजादिभयादिच्छाप्रतीकातेऽपि तत्र स्यादिनियोगोऽच्छानिष्ठादशयोच्च स्वत्सदभावौ विवदौ

प्रसच्छेयताम् । राजादिनियन्त्रणादिव शास्त्रगियन्त्रणां दन्वचैक्षिकविनियोगाभावेऽपि  
तदर्हत्वस्थानपायत् । अतएव दुर्घटेनाशास्त्रीयविनियोगेऽप्यस्तववहारो नास्ति ।  
प्रत्यवायमाचयपरं शास्त्रातिक्रमात् । तदर्हता च तदर्जितत्वप्रयुक्तास्त्वेव । तथा च  
नयविवेकेऽप्युक्तम् । तच तस्य तदर्हं यद्येनार्जितमिति । तदर्हं यद्येष्विविनियोगार्ह-  
मित्यर्थः । प्रतिबन्धादङ्गुरमजनयतोऽपि कुसूलास्य वीजस्य वीजत्वप्रयुक्तमङ्गुरोत्पादन-  
र्हत्वमिव । वस्तुतस्तु वीजत्वाङ्गुरार्हत्वयोरिव खत्वत्वयेष्विविनियोगार्हत्वयोरपि भेद-  
एव । अन्यथार्हतावच्छेदिकापरिचयेर्हताया दुर्निरूपत्वात् । तेन ब्राह्मणमिव  
खत्वमपि तदुपायक्षानव्यज्ञानं प्रदार्थान्तरमेवोत्पत्तिविनाशशालि । ब्राह्मणन्तु जातिरूपं  
नियमित्येतावान् परम्भेदः । इदं चाकरे व्यक्तं लीलावत्यादौ च ।

44. अत्र निताक्षरायां खत्वलौकिकालौकिकत्वविचारप्रयोजनमुक्तं । शा-  
स्त्रैकसमधिगम्ये खत्वे । मनुः । यद्गृह्णितेनार्जयन्ति कर्मणा ब्राह्मणा धनम् । तस्योत्प-  
र्गेण शुद्धन्ति जपेन तपसेव च ॥ इत्यादिस्मरणादस्त्रतियहादि यस्य यदर्जनोपा-  
यत्वेन निषिद्धं तदर्जिते तस्य खत्वाभावाचैर्थ्यार्जितवत्तत्पुत्राणामपि तदविभाव्यमेव ।  
लौकिकत्वे तु खत्वस्य तदर्जितेऽपि पितुः खत्वात् तत्पुत्राणां पितृधनत्वेन तद्विभाव्यम् ।  
अर्जयितुरेव प्रतिषेधातिक्रमनिमित्प्रत्यवायात् प्रायस्त्रितम् । तत्पुत्रादीनान्तु दाय-  
रूपधर्मोपायतत्त्वत्वमिति न प्रायस्त्रितमपि । सप्तवित्तागमा धर्मा दायो लाभः क्रयो  
जयः । प्रयोगः कर्मयोगस्त्र स्त्रतियह एव वा ॥ इति मनुस्मरणात् । प्रयोगो वृद्धार्थं  
इव्यप्रयोगः । कर्मयोग आर्थिक्यादिकरणम् । तच दायादीनां चयाणां वर्गचतुष्टय-  
साधारणेन जयस्य चक्रियं प्रति प्रयोगस्य खयंकृतस्य वैश्यं शूद्रस्त्र प्रति धर्मत्वम् ।  
अखयंकृतस्थापदि च खयंकृतस्थापि सर्वान् प्रति । कर्मयोगस्य तु विप्रं प्रत्येवेति  
विशेष इति ।

45. अत्र मदनरत्नकरो दूषणमाह । खत्वस्य शास्त्रैकसमधिगम्यत्वेऽप्य-  
स्त्रतियहादिनिषेधो न खत्वानुत्पादकतां तेषां वदन्ति । किञ्चु प्रत्यवायमाचहेतु-  
ताम् । इतरथा । आपद्रूपः सम्प्रदृष्टङ्गुरुभूषणालो वा यतस्ततः । न किष्मेनसा विप्रो  
च्छलनार्कसमो हि सः ॥ कुसीदं छविवाचित्यं प्रकुर्वीताखयङ्गतम् । आपत्तालो खयं  
कुर्याद्वैनसा युज्यते दिजः ॥ इति वचनैरेनसा न युज्यत इवभिन्दनेनापदि प्रत्यवाया-  
भावावगमेनापदि प्रत्यवायस्त्रैवावगमात् । प्रतिषेधप्रतिप्रसवयोः समानविषयत्वौचि-  
त्वात् । अतश्वानापदि तदृश्यपरित्वागपूर्वकं जपतपोरुपं प्रायस्त्रितमेव विदधाति ।  
न चौर्थादिवदाजदण्डमपि किञ्चिद्वचनमस्त्रतियहादौ । तेनास्त्रतियहादैः पूर्वपक्ष-  
सिङ्गान्तर्योर्देवोरपि तेषां खत्वोत्पादकत्वाविशेषवाचदर्जितस्य पुच्छादिविभाव्यत्वमपि  
तुच्छमिति नैतत्वयोजनं विचारस्य युक्तमिति ।

46. अत्र वदामः । शास्त्रैकसमधिगम्यखत्ववादिनो भते यथा चौर्थादि-  
निषेधस्य खत्वानुत्पादकत्वत्वप्रयोजकत्वप्रायस्त्रितार्हताप्रयोजकत्वपरता तथाऽस्त्रति-  
यहादिनिषेधस्थापयत्तु । यथा चापदुपायिता । तथैव सप्तमे भक्ते भक्तानि वडनन्तता ।

अन्वस्तु न विधानेन हर्त्तव्यं हीनकर्मणः ॥ आत्यात्यवच्च तत्त्वम् पृच्छते यदि पृच्छती-  
त्यादिप्रतिप्रसववलाञ्छौर्ये तस्मिन्याभावस्थाऽस्त्रियहादेरप्यत् । अन्यथोभयत्रापि  
ततः पञ्चमहायज्ञाद्यनिव्यस्तिप्रसङ्गः । शास्त्रीयत्वे स्वत्साप्रसक्तचौर्यापायकत्वनिषेधः  
कथमिति चेत् । अधिगमान्तर्भावेन कथच्चित्तात्वसक्तेनावश्वक्तव्यतात् । अपरथा  
प्रतिषेधानुपपत्तेः । शास्त्रप्राप्तप्रतिषेधे च विकल्पापत्तिभिया दीक्षितो न जुहोती-  
त्यादिवद्वाष्टकारमतेन पर्युदासत्वं सामान्यविशेषभावेन विशेषनिषेधसामान्यविधो-  
र्वाथवाधकभावोऽपि वा मतान्तरेणेवपि स्तीकांर्थमेवागत्या । प्रतिग्रहादेन्मु प्रसक्ति-  
ब्राह्मणादेरस्त्वेवेत्यापत्तदभावोपाधिकौ प्रतिप्रसवप्रतिषेधावपुष्पन्नतरौ । तर्हसवति-  
यहस्यांशतवाणिज्यादावनापदि ब्राह्मणास्य राजदण्डोऽपि स्थादिति चेत्त इष्टापत्तेः ।  
न हि स्वधर्मव्यागिनो राजदण्डाभावः कस्यापि सम्भवः । स च क्वचित् सामान्य-  
रूपेणोक्तात्वे गृह्णते क्वचिदिशेषात्मा इत्यन्यदेव तत् । अतश्वालौकिकस्त्व-  
वादिन इदमप्यपरदूषणम् । चौर्यादिनिषेधस्य चित्यप्रयोजकतागैरवम् । पर्युदास-  
त्वादिस्तीकारगैरवच्च लौकिकस्त्वादिनल्ल दण्डप्रत्यवायमात्रपरत्वम् । तेषां स्वत्वा-  
नुपायत्वस्य लोकसिद्धत्वादिति रागप्राप्तनिषेधे पर्युदासादिस्तीकारानापत्तिच्छेति  
खाधवमिति । तस्माच्चास्त्रैकसमधिगम्ये स्वत्वेऽस्त्रियहादेस्तदनुपायत्वात्तदर्जिते पितुः  
स्वत्वाभावः स्यादेवेत्यापागवचौर्यादर्जितपिठ्ठनाविभागवदसत्प्रतियहाद्यर्जितस्याप्यवि-  
भाज्यत्वम् । लौकिके तु तस्मिन् लोके तेषामपि तदुपायत्वात् सिद्धं तद्विभाज्यत्वमिति  
मिताद्दरोक्तं साक्षेव प्रयोजनम् । इदस्त्रोपलक्षणम् । पूर्वपक्षे चौर्यादर्जितपिठ्ठन-  
स्तीकारे यथा पुत्रादीनामपि दण्डप्रायस्त्वितं भवत्येव तथाऽस्त्रियहाद्यर्जितदृ-  
यहणोऽपीवपि प्रयोजनमवसेयं अर्जयितुरेव प्रायस्त्वितमित्यभिधानेनोचितत्वात् ।

47. इदन्तिवृष्ट विचार्यम् । स्वत्स्य लौकिकत्वे चौर्यस्य लोके तदनुपायत्वे  
सिद्धे वह्मक्तानश्चिनाद्यापदि यज्ञौर्यमनुमतं तेन चोरिते स्वत्मुत्पद्यते न वा । नाद्यः  
लोकेऽनुपायत्वेनावधारितात्तदुत्पत्तेरस्युपगन्तुमशक्यत्वात् । न हि प्रवक्त्रविहङ्गं शास्त्र-  
सहस्रेणापि जलादेर्धिजनकत्वादि वेत्यते । न द्वितीयः अस्तेन पञ्चमहायज्ञादिप्र-  
धानानिव्यस्तेः । न च क्षुद्रतिधातमात्रमेव तेन क्रियतां नान्यदलौकिकमिति वाच्यम् ।  
शिश्याचारविरोधात् न हि शिष्याः पञ्चमहायज्ञकृत्वा तदुपयुक्तते । यदद्वः पुरुषो  
लोके तदग्रास्त्वे देवता इति स्मरणात् । अतश्व विश्वामित्रस्त्र । अजायनीं अपच-  
मृष्टात् हृष्टेन्द्रादिदेवोऽप्येन व्यक्ता भोक्ष्यामीति मनसिक्षात्व यदा यथादेवतां तद्वागां-  
स्त्वात् प्रवरासदा तुष्टैरिन्द्रादिर्भविर्णुः । रुद्रा शस्त्रच्च तत्क्रान्तमेव प्रभूतमभूदि-  
त्यास्यायिका पुराणेषु सर्वते । शास्त्रैकसमधिगम्ये तु स्वत्वे यथाशास्त्रौर्यादेरपि  
स्वत्वोत्पादकत्वतदभावौ न विरक्तौ । लौकिकस्त्वतदुपायवादिन्लूभयतः पाश्चात्यच्चु-  
रियमिति ।

48. अत्र प्रतिविदध्यः । यत्पि चौर्यस्य स्वत्वोत्पादकत्वं न लोकसिद्धं तथा-  
प्यनेत्रे सप्तमभक्ताश्चिनाद्य विभागाद् गच्छते । स्वत्वमात्रस्य हि

शास्त्रीयत्वं विद्वद्भगवत् ज्ञानानां क्रयादिख्यसाथ अथवहारानुपपत्तेः । अतस्मैर्थनिषेधो दण्डपापमाच्च बोधकरत्वं । चौर्थस्य स्वत्वोत्पादकत्वाप्रसक्ते न तदभावपरः । यथा ब्राह्मणस्य सर्वत्र प्रत्यक्षालेऽपि जात्युत्कर्षस्यादेष्ट्रियस्य शास्त्रीयत्वमेव । पुरुषेयत्तानियमस्य शास्त्रैकगम्यत्वात् । यथाऽङ्गरात्मार्थाः । एतावत्माच्च निषिद्धागमिकां प्रत्येतद्यम् । न ह्यायं पुरुषेयत्तानियमो लोकप्रभागाणां इति । तत्रापि तावत् पुरुषपरम्पराजन्मव्यक्तौ ब्राह्मणमभिव्यज्यत इति अङ्गव्यक्तकभावरत्वं परं शास्त्रीयः शास्त्रीयत्वाङ्गकाङ्गानवत्स्वाध्यात्मौ ब्राह्मणमभिव्यज्यत इति अङ्गव्यक्तप्रमुखात्मातिप्रत्यक्षसामग्रीसम्भारादित्यपि वदन्ति । इह तु चौर्थमाच्च स्वैव स्वत्वानुत्पादकत्वयहास्तादृशस्य तस्य स्वत्वोत्पादकत्वैव शास्त्रेण बोधते । न च प्रत्यक्षविरोधः न हि प्रत्यक्षविरुद्धं शास्त्रसहस्रेणापि बोधयितुं शक्तिभिति वाच्यम् । न ह्यानुत्पादकत्वमपि लोकात् । ताढ्येन अवहाराभावादन्यव्यक्तिरेकगम्या स्वत्वस्य चौर्थोपायकाता नावगम्यत इत्येतावत् । तथा च पुच्छेणां लोकानवगतपुच्छादिजनकता यथा शास्त्रादवगम्यते तेषां दृष्टोपायान्तरजन्मतायामपि तर्थे हायत्यलु । सर्वाङ्गवनीयादीनामस्त्रौकिकमाच्चरूपाणां दृष्टोपायाभावोऽप्यधिक इत्यन्यदेतत् । प्रतिबन्धकप्रतिबद्धदाहादिजनकता यथोत्तेजक्रमन्वाणामर्थवादिशास्त्रगम्याङ्गोकप्रभागाणाम्यत्वात् उत्तेजकातायाच्च प्रतिबन्धकप्रतिबद्धकार्यं जनकतातिरिक्ताया अनिर्वाच्यत्वात् । शक्तिनाशतदुत्पत्तिकाल्पनायामंतिगैरवत् ।

49. यत्तु जन्मना स्वत्वं निराकुर्वता जीभूतवाहनेन । क्षचिच्छान्मनैवेति जन्मनिवन्धनत्वात् पितापुच्छस्य सम्बन्धस्य पितृमरणस्य च कारणत्वात्परम्परया वर्णनभिति प्राचीनजिखनाभिप्रायमुक्ता कथमुत्पादनरूपेण पितृगतव्यापारेण पुच्छस्वेतपत्तिरित्याशङ्कात्मकं अन्यव्यापारेणाप्यन्यस्य स्वत्वमविरुद्धं शास्त्रमूलकत्वादस्य । दृष्टस्त्रौकिपि दाने हि चेतनोदेशकत्वागादेव दाढ्यापारात् सम्बद्धानस्य त्रये स्वामित्वम् । न च स्वीकारणात् स्वत्वं स्वीकार्त्तुरेव दाढ्यापत्तेः । परस्वत्वापत्तिफलेन हि दानरूपता तत्त्वं फलं सम्बद्धानाधीनम् । यथा हि देवतोदेशेन त्यागं कुर्वन्नपि यजमानो न होता किञ्चन तस्यैव यागस्य होमाभिधाननिमित्सभूतं प्रक्षेपं कुर्वन् कृत्विगेव होतेऽनुच्छते तद्दद्वापि स्थात् । किञ्च । मनसा पाच्चमुद्दिशेत्यादिशास्त्रे स्वीकारात् प्रागेव दानपदं दृष्टम् । ननु यदृशं स्वीकारः । अभूततद्वावे चिप्रयोगादस्त्रं स्वं कुर्वन् आपारः स्वीकारो भवति कथमतः प्रागेव स्वत्वम् । उच्चते । उत्पन्नमपि स्वत्वं सम्बद्धानव्यापारेण ममेदमिति ज्ञानेन यथेद्यवहारात् क्रियते इति स्वीकारशब्दार्थाः । याजनाध्यापनसाहचर्याङ्गं प्रतियशस्य स्वत्वमजनयतोऽप्यर्जनरूपता न विद्वा । याजनादौ दक्षिणादगादेव स्वत्वात् । पितृनिधनकालीनं जीवनमेव वा पुच्छस्यार्जनं भविष्यति । किञ्च । भावादिधने तन्मरणात्मरणात्माजीवनादा भावनरादेः स्वत्वमकामेणापि वाच्च तद्विद्याप्यस्ति ।

50. तदेतदुत्पादमतिविजितिम् । तथा हि शास्त्रमूलत्वादस्येति तावत् स्वत्वस्य जौशिकत्वाधगादेव निराकारम् । यदपि दृष्टस्त्रौकिपीयादि तदप्यापात-

सुन्दरम् । न हि प्रतियहीतर्थस्तीकुर्वत्यपि तस्य स्वत्मुत्पद्यते । पात्रविशेषोद्देशेन त्वागे तेजास्तीकुर्वतेऽपि तत् स्वत्मोत्पद्यते परस्मै तस्य प्रतिपादनासम्भवप्रसङ्गात् । यदपि स्तीकुर्वते दाढ़ात्यापत्तेऽरिति तदप्ययुक्तम् । परस्वत्मापत्तिपञ्चकव्यापारस्य दानत्वात् सम्प्रदानस्तीकारानुकूलानुमानादिव्यापारस्य दानप्रदार्थत्वात् तत्पात्रोपहितता तु तस्य सम्प्रदानस्तीकारामन्तरेण न सम्भवतीति सम्प्रदानव्यापारस्त्वाट्कः । न तु सरव दानशब्दार्थः । यदपि यथा हीत्यादि तदपि न । यजमानकार्त्तकामिहोत्रहोमादौ तदविरोधात् । यत्त्रापि दर्शपूर्णमासादौ लागमाचं यजमानेन क्रियते । चतुरहत्यतस्य प्रक्षेपेऽप्यव्याप्तिभिस्त्रित्वापि विविक्षकार्त्तकत्वाद्यथात्वं तद्यवहाराविरोधात् । अत्यस्त्वय प्रक्षेपे परं होमशब्दवाच्यता नाहि । स तु त्वागः स्वकर्त्त्वोऽन्यकर्त्त्वो वाऽवक्षेपको-उल्ल न तावता कक्षिहोषः । अतएव यगस्य न प्रक्षेपप्रक्षेप आत्मलाभो होमस्य तु तदपेक्षाएव । दानस्य तु प्रतियहीत्यापारस्यापेक्षतैव । तदभावे दानप्रदार्थनिष्ठत्वे ।

यत्त्र किञ्चेत्यादि । तदपि यत्किञ्चित् । उत्तर्गस्त्रैव तत्र विधानात् न तु दानस्य । अतएव दाता तत्पात्रमाप्नोतीत्युक्तमन्वया तस्यानुवादत्वपत्तेः । दानत्वेहितस्य तत्पात्र-भावाप्रसक्षेत्सु तत्पात्रमाप्नोतीति व्यर्थमेव स्यात् । अतस्मात् जज्ञप्रक्षेपरूपः पात्रोद्देश्यमुत्सर्गेत्व ददातिना विवक्षितो दानत्वनिष्ठत्स्तु तस्य सम्प्रदानकार्त्तकस्तीकारे सव्यवेति परमार्थः । अतएवोत्तद्जे इत्येव तत्र सङ्कल्पवाच्यं शिष्टानां न तु दास्ये इति सम्प्रददे इति वा । अतः प्रतियहादेव दानस्य फलेऽपि सम्प्रदानस्य स्वत्ममिति प्रतियहस्यार्जनरूपत्वमविद्धम् । स्वत्मजनको हि व्यापारोऽर्जनशब्दार्थः । अतएवाह प्रभाकरः । प्रलयितमिदं केनापि । अर्जनं स्वत्वं नापादयतीति विप्रतिसिद्धमिति । अथास्य यज्ञः प्रागेव विष्टतः । किञ्च । प्रतियहस्य ममेदमितिज्ञानरूपस्य दाढ़ात्यापारमात्रोत्पन्नस्वत्मवहारार्थतामात्रसम्यादकतायामर्जनशब्दस्य तत्र गौणता स्यात् । अन्यस्मै तत्प्रतिपादनानुपपत्तिच्च पूर्वमुक्ता । तदस्तीकारे प्रागुत्पन्नतत्वत्वनाशच्च वक्ष्यः स्यात् । न च दाढ़ात्यापारात् तत्वत्वनाशात् साधारणसम्प्रदानस्त्वत्यपत्तिरूप-शाश्वुपेता त्वयापि । अपरथेतत्वत्वनाशेऽन्यस्य च स्वत्मानुपत्तेभ्यक्षमस्य तस्य परिमिताप्रसक्षित्वा । तथा मन्त्रेऽपि पात्रविशेषोद्देशकत्वागे पात्रविशेषस्त्वत्यप्नमपि स्वत्वं तदस्तीकारे नाशत्वनस्य स्तीकारात्तस्त्वत्यपद्यत इति न कोऽपि विरोधः साधारणत्वस्त्वत्विनाशात्याधारणस्त्वत्यपत्तिरिवेति वाच्म् । यतस्मात् साधारणत्वस्त्वत्ववहाराभावेन तदुत्पत्तिरप्नमविका नैव स्तीक्रियते गौरवाच । किञ्च दातुरेव यथेष्टविनियोगार्हस्वत्मापगमेऽपि परस्वत्मापत्तिपञ्चाभावे दानशब्दार्थानिष्ठत्वत्वेत्यविशिष्टस्त्रपञ्चार्थिनः प्रतिपादनावधि परिपाणगीयत्वरूपं स्वत्मस्त्वत्वे । यथाऽऽते इविषि भक्षण-द्वावावधि अस्युपश्यस्त्वर्थादिनिषेषाभ्यव्याप्तिभित्तदोषवाक्यानुदोषेन । तथा चान्यस्त्वानुपत्तावपि न मध्यकालपरियहात्यगिवारणादिदोषः । शिष्टाचारोऽप्युभवत्परिपाणन-रूपकाम्बुजकरम् । न चोत्सुर्गमात्रस्य तत्र त्वया विभाष्यपगमात्परस्वत्मापादादरेत्व

ग स्यादिति वाच्म् । ताहश्चोत्सर्गस्यैव विधितात्यर्थविषयत्वात् । होमस्यालेऽप्यन्यथा भक्षणाद्वावानादरापत्तेः ।

यत्त याजनाध्यापनसाहचर्यात्वतियहस्यापि खलाजनकालेऽपि गौणमेवार्जनत्वमिति । तदप्यबोधात् । तत्र हि ये ये द्विप्रभूतीनां भागास्तेवां तेषां तेष्यो भूतिरूपेणैव दक्षिणाकाले प्रतिपादनम् । परिक्रयवहारोऽप्यतरव खामिकर्मपरिक्रय इति जैमिनिसूचादौ विस्तरेण निर्गीतिरूप विस्तरन्तु तत्रैव इष्टव्यम् । कर्मकरात्मतिजनिका भूतिरेव हि परिक्रयः । एवमध्यापनेऽपि शिष्योऽध्यापकाद्याध्यापनभूतिमेव तत्स्मोषजननीमध्ययनान्तेर्प्रयन्ति । नियतभूतिकरणे तु भूतकाध्यापनमुपयातकम् । अतरेव याजनाध्यापनयोः प्रतियहाइ भूतिशब्दवाच्यनिर्वेशाच्च एथगमिधानमुभयमिश्रितत्वात् । तेन तयोरपि मुख्यमेवार्जनत्वम् । दक्षिणात्वव्यवहारोऽप्यतरव ऋत्विग्ध्यापकदेवे ।

यदपि भाचादिधने भाचन्तरादिस्त्वोत्पादकत्वं तद्विधनस्य तत्त्वालीनभाचन्तरादिजीवनस्य वा लूपमिति पुच्छादिवपि पित्रादिनिधनं तत्त्वालीनं जीवनं वा खलोत्पादकमस्तु न तत्कृतं पुच्छादिजन्मैवेत्यक्षम् । तदपि जन्मनोऽपि खलोत्पादकत्वस्यावश्यकत्वोपपादनादेव परिहृतम् ।

51. यत्तोक्तमूर्ढ्यमितुच्चेद्यादि मनुवचनमपि जन्मनः खलापादकत्वे न घटते । प्राप्तिभागनिषेधार्थत्वे तस्यास्त्वार्थपरत्वापत्तेः विभागदृष्ट्यार्थत्वेन तद्विधानकालविधानयोरसम्भवात् । विभागस्य पक्षप्राप्तस्य नियमार्थत्वे सहवासविधिविरोधाध्यापत्तेः । तस्मात् पितरि सति मातरि च सत्यां तद्वनस्त्वाम्भाव उपरतयोरेव तयोः पुच्छादस्त्वानस्त्वाम्भमिति प्रतिपादनार्थमेव ददात्यमिति ।

52. तद्व्युत्तानाभिधानम् । अस्त्वार्थविधानापत्तेलुत्पत्त्वात् । प्रागस्त्रात्मेग्रज्ञकालविधिपरत्वे बाधकाभावात् । इच्छाप्राप्तकालानुवादेऽपि अवहारणास्त्वत्वेनाविरोधात् ।

एतेन जातेष्ठिवज्ञातप्राणवियोगापत्तिस्त्वरूपविशेषविरोधादिनिमित्तानन्तर्यावाधकाभावात् पितृपरमानन्तरक्षयात्वविभागः प्रसञ्जेतेव्यपाल्यम् । कालविधानेन पितृपरमस्य निमित्तत्वाबोधनाच । अन्यथा निमित्ते सति नैमित्तिकस्त्वावश्यकत्वात्यिच्छेऽपि विभागकरणे प्रत्यवायेऽपि प्रसञ्जेत । प्रतितत्वपारिक्रात्ययोः पितृस्त्वान्श्चोऽप्यविधिकः जन्मना खलं तुल्यमेव । पातित्वे तु प्रायच्छित्तानावश्यकत्वविभागानृताच । अन्यथा इत्यसाध्यप्रायच्छित्तमपि पितृः खलव्येव न स्थात् ।

अतरेव मातुर्निर्दृतेरजसीत्यादिपि कालविधिपरमेव । ग तु पातित्वादिवत्तत्वत्वाभावः । स तु जोक्तरेव विभागनिषेधाच्च भाचादाविवेद्यादिवक्षते ।

53. किञ्च । तदेवं पितृस्त्वापगमरकः कालः अपरक्षानपगतत्वविभागस्ये पितुरिच्छयेति कालद्वयमित्युक्ता भूम्ये मिताक्षरोक्तं विभागकालत्वं दूषयिता । तस्मात् प्रतितत्वनिष्ठृइत्योपरमैः पितृस्त्वापगम एकः कालः अपरक्षः सति खले

तदिच्छात इति कालइयमेव युक्तमित्युपसंहरता जीमूतवाहनेनैव पितृखलापानपगमेऽपि पुचाणां विभागो हीनक्षतः । तत्र पुचाणाम्बिदधने खल्वोत्पादः कथम् । कथम् जीवतोः पितृरेखलाम्बप्रतिपादकवचनैः सह न विरोधः । अस्स्य विभागासम्भवात् कथं तेषां विभागः । पितृखलापगमरेऽर्कं पितृखलेवनेन विवक्षितोऽतश्च न्तपदं परिवृत्यव्योर्जमित्युक्तम् । पितृखलापगमरेऽर्कमित्यर्थः पितृखलापगमस्य तस्मिन्नादिवचस्य परितत्त्वगित्युक्ताभ्यामपीत्यादि खल्पत्रे पूर्वापरविरोधस्य न कथम् ।

अत्राप्युपरतस्युक्तादिना पुचाणां खल्वमित्यधने भवतीति ज्ञापनादयमेकः काल इति उक्तम् । तचायुपरतस्युक्तादिनेवनेन पितृखलापगमश्च यदि विवक्षितस्तर्क्षमपगते पितृखले तदिच्छाप्ररः काल इत्यभिधानविरुद्धम् ।

पितृखलापगमकाणीनपुचादिजीवनस्यैवार्जनस्य तदोयस्य खीकारात् पितृखले सति पुचाणां तद्वने खल्वस्तीकारः कथम् । न ज्ञानाश्रमित्यमात्ररजोनिरुक्तिमात्रेण पितुः खलापगमः पूर्वद्वयस्यामिसम्बन्धाधीनं तत्खाम्योपरमे यत्र त्रये खल्वं तत्र निरुद्धो दायशब्द इति खेत्रादायशब्दार्थाभावात् पितृखलापगमे यत्र विभागस्तत्र दायशब्दप्रयोगेऽपि दुःख इत्यादिबुद्ध्याकुली स्यात् ।

54. जन्मना खल्वस्तीकारे तु सर्वमनाकुलमित्यादि सुधीभिरुक्त्रेयम् । अतश्च मिताक्षरादौ पूर्वस्यामिसम्बन्धाधीनं यद्वनं तत्र खल्वमन्यस्य तदेव दायशब्दवाचमित्युक्तं न तु पूर्वस्याम्योपरमोऽपि तत्र प्रवेशितः । तस्मिं द्विविधो दाय इति ।

मिताक्षरोक्तविभागकालत्रयसमर्थनन्तु तत्प्रस्तावे प्रपञ्चविद्याम इत्यत्त्वमुक्तानुप्रस्ताविद्यारेणेति ।

55. यत्र जीमूतवाहनेनैव । मिताक्षरोक्तम् विभागो नाम इत्यसमुदायविद्यामनेकालाम्यानां तदैकदेशेषु व्यवस्थापनमिति विभागशब्दार्थः । न च समन्वयविशेषात् सर्वेषां सर्वधनेत्यप्तस्य खल्वस्य इत्यविशेषे व्यवस्थापनं विभाग इति वाचमित्याशै समन्वयनस्तद्वाप्रतिपक्षस्य समन्वयस्यावयेष्वेव विभागश्चात्युक्तापादक्षात् । छत्वपितृधनगतस्वत्वोत्पादविनाशकाल्पनागौरवात् । यथेष्टविनियोगफलाभावेणात्मप्रयोगादेति दूषयित्वा उच्चते । एकदेशोपात्तस्यैव भूहिरण्यादावत्पत्तस्य खल्वस्य विनिगमनाप्रमाणाभावेन वैश्विकव्यवहारानर्हतया अव्यवस्थितस्य गुटिकापातादिग्ना अस्त्रं विभागः । विशेषेण भजनं खल्वस्थापनं वा विभाग इति युक्त्यच्चेयुक्तम् ।

56. तद्वयतत्पत्तोपन्थस्य दूषितम् । यत्रास्य खल्वं तत्रैव गुटिकापात इति कथं वचनाभावादिच्छेत्यन्तम् ।

यत्र हि पितुर्निर्धनागमन्तरं तदीयाश्चयोरेकमात्रय आत्रा यदर्जितं तचार्जकस्य दौभागावपरस्यैकः सर्वसम्भवः । तत्र यदि प्राचीनधनविभागकाले गुटिकापातादर्जकेन सहवाच्चः पञ्चाङ्गव्यलदा प्रादेशिकस्वत्ववादिमते प्रागर्जकस्यैव सोऽश्रूतितेनार्जितधने कथं भावन्तरस्य विभागः । तत्रैवास्थेन तदुत्पत्ते सुतरां खल्वाभावादश्चस्य

चाविभाव्यतात् । यदि वार्जकेतरेकं सेतुओ ज्ञात्वा दा तेन अर्जितधनस्य सम्भागश्च उत्तमः । इतस्य खायोनापरस्याचायोनार्जकत्वादिति द्वयिते ।

बलुतस्तु सम्भाविष्टेवात् सर्वसमन्वितां सर्वघोत्प्रस्य खालस्य गुटिकापाता-दिना प्रादेशिकावस्थापनं विभागः ।

इवं ज्ञात्वाधनगतखत्वेत्यादविनाशावप्यगत्या कर्त्तव्ये । संहृष्टायां प्रादेशिक-खत्वेत्यादज्ञात्वधनखत्वेत्यादविनाशाविव ।

तथ, विभक्तो यः पुनः पित्रा आचारैकत्र संस्थितः । पितृव्येषाप्यवा प्रीत्या स तु संहृष्ट उच्चते । इति द्वृहस्यतिवचने येवामेव हि पितृभाष्ठपितृवादीनां पितृपिता-महोपार्जितप्रवेषाविभक्तां खत्वमुत्पत्तिः सम्भवति । तत्त्वं विभक्ताः सन्तः पुनः पर-स्वरप्रीत्या पूर्वज्ञतविभागध्येये । यत्तत्वं तत्त्वमपि यत्तत्वं धनं तत्त्वावैवेकसिन् कार्यं एकाग्रेषिण्यपतया स्थितात्मे संहृष्टाः । न त्वनेकरूपाणां धनसंसर्गमाचेष्व तत्त्वय कारिका विजामपि संसर्गित्वम् । तापि विभक्तानां ब्रह्मसंसर्गमाचेष्व । प्रीतिपूर्वक-ताद्वाग्भिसन्वितं विनेत्रभिसद्धता दायभागज्ञतापि खल्लितम् ।

साधारणखत्वादेव हि बन्धुनामविभक्तानां भोगं नैव प्रदापयेत् । इति वाया-यनवचनं यथा अनुमेव सङ्कल्पते । यावद्द्विभूतधनमात्रे खत्वालस्यापि सत्त्वात् । अत-एवाच परस्यरस्य चौर्यमपि नापद्यन्ते ।

इव च । साक्षित्वमातिभाव्यत्य दानं यद्व्यामेव च । विभक्ता आतरः कुर्यां वि-भक्ताः परस्यरम् । इति नारदवचने परस्यरनिष्ठपितदानादिनिवेद्योऽपि व्यायमूलक-इव । दानादे: पूर्वमपि देयादौ प्रतियहीचादे: खत्वसत्त्वादानप्रतियहादेरसम्भवात् ।

अविभक्तालादेव चाविभक्तादेव यत्क्षतं द्विष्टादृष्टार्थं कर्म तत्र सर्वेषां पाणभा-गित्वम् । तथा च नारदः । भाद्रूशामविभक्तानामेको धर्मः प्रवर्तते । विभागे सति धर्मोऽपि भवेत्तेषां एथक् पृथक् ॥

आसेऽपि । खावरस्य समस्तस्य गोत्रसाधारणस्य च । नैकः कुर्यात् ज्ञायं दानं परस्यरमतं विना । अत्र समस्तस्येति विशेषयोपादानात् खत्वाधनगतमेव प्रत्येकाखत्वं कीयते ।

तस्मात् तु स्त्यधनसम्बन्धनारस्येन सम्बन्धिसकाशात् संक्रान्तं धनं तस्यापि ममा-पीति सम्बन्धिना प्रतीयते तदिमतौ दानादिकं प्रतिविज्ञं खार्यम् ।

अतो नैकदेशमतं खत्वमिति ।

57. इदम् ब्रह्मसमुदायविषयाणामनेकखाम्यानमेकदेहे द्वयस्यापनं विभाग इति दत्तो मिताद्वारात्मोऽप्यभिमतमिति कश्चते ।

इदनिष्ठ्य विचार्यम् । ब्रह्मसमुदायनिष्ठपितं खामिगतं खाम्यम् । खामिनिष्ठ-पितम् ब्रह्मसमुदाये खत्वं व्याप्त्यवृत्ति प्रत्येकावृत्तिः वा । नाथः । एकैकस्त्रामित्य-खत्वाम्यनाशे तद्वाशस्यावशिष्टुसमुदायगततदुपत्तेच व्याप्त्यनायामतिगौरवापत्तोः प्रत्येकस्य प्रत्येकदेहे दानद्वयादित्ययेष्विनियोगार्हत्वापत्तौ अवहारविद्वादापत्तौ ।

न द्वितीयः विभागे सति तावताक्षाशेत्पादवक्ष्यनापत्तेः । सत्यं सतो विभागे न तु विभागात् स्वत्मिति यश्चविरोधाच्च ।

अच्छ ब्रूमः । प्रत्येकवक्षीनि सम्बन्धाविशेषात् स्वाम्यानि च सम्येव । परस्पर-विभागागते परस्परस्यान्यदीयद्वये तानि न इत्यन्ति परमरण्यापरिवृत्यादिनेवेति न कायनुपर्णतः । अवस्थापनमपीडमेव अन्यैकदेशं उत्पादनमित्येव वदेत् । अतश्च विनाशमात्रकाल्पना न तु स्वत्वान्तरोत्पादकाल्पना । जीमूलवाहनमते च कुञ्ज वास्तवं मम स्वत्मिति विभागात् प्राग्निरूपणात्तदधीनश्रौतस्मार्तसौक्रियकर्माण्ड्येदः । अनु-मत्या विभागोत्तरक्षतया परस्परद्वये परस्परस्वत्वान्तरोत्पत्तिस्त्रीकारे तदुत्पादविनाश-काल्पनागौरवं यत् त्वया मिताक्षराक्षते प्रत्यापादितं ततोऽपि तवाधिकमापदम् । अवस्थारात्मुपयोगेन समुदायस्वत्वस्य निष्प्रयोजनता त्वयोपन्थस्ता साप्येकदेशगतस्वत्वा-भ्युपगमे तु ल्लैवेति छतमतिदूरं गत्वा ।

## CHAPTER II.

### PART I.

1. अथ विभागकालकर्त्तनिरूपयम् । तत्र मनुः । ऊर्जं पितुख मातुख समेव आतरः समम् । भजेरन् पैठकं रिक्ष्यमनीशास्ते हि जीवतोः ॥ पैठकं पित्रोः सम्बन्धि प्रागुभयोपादानात् । अतश्च पितुरूर्जमिति पिठृधनविभागकालः । मातुरूर्जमिति मातृधनविभागकालोऽभिहितः । चशब्दस्तु कालान्तरसमुच्चर्यार्थः न तु इयोरूर्जमिति नियमार्थः । पिठृधनविभागे मातृजीवनस्याप्रतिबन्धकत्वात् । मातृधनविभागे पिठृ-जीवनस्य ।

तथा चाह संग्रहकारः । पिठृधनविभागः स्त्राज्जीवन्यामपि मातरि । न स्वतन्त्रतया स्वाम्यं यस्मात्मातुः पतिं विना ॥ मातृधनविभागोऽपि तथा पितरि जी-वति । सख्यपत्नेषु यस्मात् स्त्रीधनस्य पतिः पतिरिति ॥ पश्युरभावेऽपि पुच्छेषु सत्यु यतो मातुखड्ने स्वातन्त्रेष्वा स्वाम्यं नास्यतस्मां जीवन्यामपि पिठृधनविभागे युक्तः । अतस्मापत्नेषु सत्यु भार्याधने पश्युः स्वाम्याभावस्वतस्मिन् जीवत्यपि पुच्छावां मातृ-धनविभागाधिकार इति भावः ।

अतश्चानीशास्ते हि जीवतोरित्वपि तत्तद्वने अवस्थया अस्त्रातन्त्रप्रतिपादकं न त्वस्वत्वप्रतिपादकं जन्मना स्वत्वस्य पुच्छादां पिठृधने अवस्थापनात् ।

वाचशब्दस्यः । विभागच्छेत् पिता दुर्यात् स्त्रेष्या विभजेत् सुतान् । ऋषेषु वा श्रेष्ठभागेन सर्वे वा स्युः समांशिनः ॥ अनेष्या पिता सुतान् विभजेदिति वदन जीवत्यपि पितरि पितुरिष्या यदा शोऽपि विभागकाल इति स्फूर्यति । तदा च

पितैव विभागकर्ता । असाक्षं हि भवेदेषां निर्देषे पितरि खिते इत्यनेन पुचाकाम् असातन्त्रप्रतिपादनात् । निर्देषे इति विशेषवात्यातिव्यादिरेवति सत्यपि पितरि पुचाकाम् तत्यातन्त्रभावात्तदिच्छा यदा द्येऽपि विभागकाजः पुचाकाम् तदा विभाग-सर्वत्वमित्युक्तं भवति ।

अन्यादुपि पुचेष्यथा विभागकाजः पितरि ब्रह्मनिस्पृहे निष्ठतरम्भे मातरि च निष्ठतरजस्यायाम् । यथाह नारदः । अत ऊर्ध्वं पितुः पुचा विभजेयुर्जनं सममिति । पित्रोर्हृष्टं विभागमुक्ता । मातुर्निष्ठते रजसि प्रसासु भगिनीषु च । निष्ठते वापि रमवात् पितृयुपरतस्पृहे, इति ।

जीमूतवाहनेन तु विष्टु वायश्चरब्दे इति पाठो लिखितः विष्टु पतिते अश्चरब्दे ग्रहस्यात्मरहित इति व्याख्यातच । निष्ठते वापि रमवादिति पाठान्तरमनाकर-मित्यप्युक्तं तद्युक्तं मिताक्षरादिवडगिवन्वलिखितस्यात् । पुचा धनं विभजेयुरित्ववृष्टः ।

गौतमोऽप्यूर्ध्वं पितुः पुचा रिक्षं विभजेत्विलुक्ता निष्ठते चापि रजसि मातु-र्जीवति चेष्टतीत्याह ।

द्वृहस्यतिरपि । पित्रोरभावे भाद्रुकां विभागः सम्पदर्शितः । मातुर्निष्ठते रजसि जीवतोरपि चास्यत इति । तथा सरजस्यायामपि मातर्यनिष्ठवपि पितरि दीर्घ-रोगयस्तेऽधर्मवर्त्तिं पुचेष्यथा विभागः । यथाह शङ्खः । अकामे पितरि चक्र-विभागे द्वजे विपरीतवेतत्वे रोगिणि चेति । नारदोऽपि । आधितः कुपितज्ञैव विषयासक्तमानसः । अथाशास्त्रकारी च न विभागे पिता प्रभुरिति ।

2. अत्र पितृयुपरतम् एवः कालो निष्ठते चापि रजसीति द्वितीये जीवति चेष्टतीति द्वितीये इति मिताक्षरायां जीमूतवाहनोत्तमं दूषणम् । माठरजो निष्ठते पितृयुपरतस्पृहत्वविशेषवाचे । चिंश्चार्हां वृहेत्वान्नां हृद्यां दादशवर्षिकीम् । अहु-वर्षाऽप्युष्टवर्षां वा धर्मे सीदति सत्यरः । इति मनुना विवाहकाषविधानात् । वर्णं पश्चाश्चतो ब्रजेदिवात्ममान्तरगमनकालविधानाच । तदा रजोनिष्ठतेर्मातुरतम्भे पितरि वोपरतस्पृहे वाग्प्रस्त्रे तत्पुचाकामिष्यथा विभागमावप्रसङ्गात् । निर्विशेषव-स्पृहत्वमेव पितृस्वविभागकाल इति तृच्यमाने अनुपरतस्पृहे पितरि पतिते-उप्यविभागप्रसङ्गात् । अथमप्यपरः काल इत्यभिधाने कालचतुर्थ्यापत्तिः पितृयुपरतमः पतितत्वं निःस्पृहत्वमिष्यथा चेति । तस्मात् पतितत्वानिःस्पृहत्वोपरतमैः पितुः स्वत्वापगम एवः कालोऽपरत्वं सति तत्वत्वे तदिच्छात इति कालचयमेव युक्तमिति ।

तन्मिताक्षराक्षरादाश्चयापरिच्छानात् । न हि तेजं कालचयनियमोऽभिहितः । तपेत्यादिग्रन्थेन कालान्तरस्यानुपदमेव प्रतिपादनात् । नियमस्य निर्विजितात् । पितृ-स्वत्वापगम एवः कालोऽपरत्वानपगततद्व पितृस्वत्वे तदिच्छात इति कालचयमित्य-प्रश्नज्ञम् । निष्ठतरजस्यायां मातरि त्वन्वयापत्तेः न हि माठगिष्ठतरजस्यात्माचेष्व पितृस्वत्वापगमः । अमना स्वत्वावस्थापगमात् पितृस्वत्वापगमस्य नामाभ्यन्वयात्-सम्बद्धः । एवं दीर्घरोगयस्त्वेऽपि न स्वत्वापगम इति कालचयनियमक्षयापि दुष्क-माधः । इत्यापत्तौ तद्वयविदोऽपि ।

3. यजोतां तेनैव । मातुर्निर्दृते रजसीति पितामहादिधनाभिप्रायम् । निष्ठते रजसि पुचाक्षरसम्भवाभावातदानीमपि पितुरिच्छयैव पुचागां विभागः । अलिहते रजसि क्रमागतधनविभागे पञ्चाज्ञातानां दक्षिणोपायपत्तेः । न चासौ युक्तः । ये जाता येऽप्यजाताच्च ये च गर्भे व्यवस्थिताः । दक्षिण तेऽभिकाङ्क्षन्ति दक्षिणोपो न विद्यते । इति बचनात् । यतश्च पितॄधने कालदयमतश्च मनुग्रौतमादिभिर्मृतपदं परिवर्त्य-र्ज्ञभियुक्तम् । ऊर्ज्ञं पितुः स्वत्वापगम इत्वर्थः । यदि चास्य पितॄधनविवर्यता स्यात् तर्ह्यूर्ज्ञं विभागाज्ञातस्तु पितॄमेव हरेऽनभिव्यस्य निर्विवर्यता भवेत् । निष्ठते रजसि पुचात्पत्त्वसम्भवात् । मातृधनगोप्तरत्वस्यात् नाश्वानीयमेव । मातुर्वेद निर्जनतापत्तेः । अतो निष्ठते रजसीति यैतामहादिधनविवर्यम् । न चेष्टामनपेक्ष्य रजोनिरुद्दितमार्चं विभागनिमित्तं सम्भवत्वनिर्णया विभागभावात् कालेऽच्छयेवपेक्षायामूर्ज्ञं पितुः पुचा रिच्छयं विभजेयुर्निर्दृते रजसि मातुर्ज्ञविति चेष्टतीति गौतमबचनात् पितुर्वेक्षात् इति निर्वायित इति पितामहादिधनविभागस्यापि पितोरभाव इत्वेकाः कालः । मातुर्निर्दृते रजसि पितुरिच्छात् इति कालदयमेवेति ।

तद्यनभियुक्तप्रमोदनम् । दक्षिणोपायपत्तेः पितॄधनेऽपि तुस्यतात् । ऊर्ज्ञं विभागादिव्यस्य निर्विवर्यतापत्तेऽपि पितामहादिधनेऽपि तुस्यतात् । सस्युहे पितॄर्दि पातिलादिदुर्दृते पितामहादिधनेऽपि पुचेऽच्छया विभागस्य सकलसम्भवत्वादवश्ववाच्यताच्च । वस्तुतस्तु पितामहादिधने भूर्या पितामहोपायतेवादिना सद्ग्रहस्य पितापुच्छान्वस्य वश्वमावाचात् पुचेऽच्छयापि तस्य विभाग उचित एव । यस्वच वाख्यानान्तरमनीष्टतस्य तद्गग्नोपरत्वादिकर्त्तव्यं तत्परं तद्यनविवेचने निराकारिष्यामः ।

4. वयन्तु स्वातन्त्र्यगार्हे पितॄर्दि जीवति तदिच्छैव विभागनिमित्तम् । यातिव्यापरिव्यादिभिस्तदनर्हे पुचेऽच्छयि । तदुपरमे तु स्वेषाया निमित्तत्वमर्थसिद्धमिति कालदयमेवानेन प्रकारेऽव । अन्यथा बह्वानमुपरत्वस्युत्तरादीनां विकल्पसमुच्चयादिव्यस्यनामुपपत्तौ विश्वेवविश्वेवभावाद्यव्यवस्थापत्तौ बङ्गवाङ्गुलीभावः । यतश्च वृचिविचरणे केवाचिद्देवोपादानमनुपादानस्य केवाचित् सर्वच्छते ।

एवमूलकाद्यनालाघवेनोपरत्वस्युत्तरादिभिः पितुः स्वातन्त्र्यभावस्यात्मास्य सर्वेवप्रकाशाचात् । अग्निश्चात्मे हि जीवतोः निर्देष्वे पितॄर्दि ख्याते । जीवतोरपि इत्यते इत्यादिव्यवचनस्तरसेऽप्येवमेव ।

यतश्च पितोर्ज्ञवितोर्ज्ञाद्वाँ सहवादो मुख्यलदनुमत्वादिना व्येष्टस्य कार्यचामस्यान्वस्य वा पुचस्य स्वातन्त्र्यमन्वेषां तदनुरोदादवृत्तित्वमिति च पक्षदयमुक्तवन्नो व्यापाश्च । आद्वाँ जीवतोः पितोः सहवादो विधीयते इति व्यापः । जीवति पितॄर्दि पुचावामर्थादागविसर्गाद्वेषु न स्वातन्त्र्यम् । कामन्दीने प्रोविते आर्चिङ्गुते व्येष्टो वार्ताचिन्तयेदिति व्यापीतः । शङ्खितितौ तु सप्तशतमाहतुः । पितर्यश्चते दुट्टमयव्यापाश्चादान् व्येष्टः प्रतिकुर्यादग्नतरो वा कार्यचालदनुमतो न त्वकामे पितॄर्दि विवर्यविभागे दक्षे विपरीतचेतसि दीर्घरोगिविविवाच्येष्टरव्यवदर्थान् पाणवेदितरेवामुच्चमूर्च्छां हि दुदुम्यमव्यापाश्चात्माः पितॄमन्नो मातुरप्येवमव्याप्तितावा इति ।

तस्माद्यथोत्तरीवा विभागस्य कालचयमेवेति ब्रूमः ।

5. अथ मनुवचने समेकेत्वकेन पाणिकां साहित्यमवूद्यते वज्रत्वद् । अन्य-  
चैकेच्छया इयोच्च आचोर्विभागो न खात् । सममिति तु नियम्यते । तत्र विवश्यामः ।

6. यतु पित्रोरिति । द्विचननिर्देशात् सोदरभादृशां पितृधनविभागोऽपि  
मातुरभावत्वं कार्यः । न तु मातृधनविभागार्थं मातुरभावोपादानम् । जीवतोरपीत्यस्य  
मातृधनगोचरत्वानुपयसेऽन्यधनगोचरत्वमवश्यं वाच्मतो यज्ञैव पित्रोरभावो निमित्तं  
तज्जैव जीवतोरपीत्यपिश्चेन जीवनस्यापि प्रशस्तत्वीर्त्तिनाम भातुरभावो मातृधने  
आत्मेयद्वितीयमूलवाहन आह ।

तदस्मव्यज्ञम् । पितृस्य मातुर्वेति मनुवचने पृथक्निर्देशादन्यथापि द्विचनस्य  
विभागस्मव्यविकल्पामाचेष्टा आखारां युक्तम् । इतरथैकतरधनेऽन्यतराभावस्थाद्या-  
र्थत्वापत्तेः ।

यज्ञोत्तमं जीवतोरित्यादेभात्यधनगोचरत्वानुपयसेश्चित्तादि । तस्यापि कोऽभि-  
प्रायः । मातुः पितरि जीवत्यस्तानुप्राप्तं तज्जनगोचरत्वमिति यदि तर्हि सत्त्वपत्वेषु  
भार्याधनेऽपि पितुः स्वाच्यं तदभावस्यापि तत्त्वानुपयोगादन्यविविष्यत्वापत्तिः ।

अभिप्रायान्तरनक्षत्रमवदुक्तिकमेवेति वस्त्रामः । तस्माद्युष्टार्थत्वात्तत्त्वान्विषय-  
त्वं तदभावः संयहकाराद्यतो युक्तः ।

7. यथा च पित्रोर्जीवतोर्भादृशां सहवासो मुख्यलया तदूर्जमपि । तथा च  
शृङ्खलिखितौ । कार्म सहवसेयुर्तेजतः संहता दण्डिमाप्यदेवत्तिति । संहताः सह-  
वसन्तो ऋषोपचयताहाव्यादिना परस्परकृतेन दण्डिमाप्युदित्वर्थः । नारदोऽपि ।  
विभृयादैकतः सर्वान् ज्येष्ठो आता यथा पिता । आताश्चतः कनिष्ठो वा शत्र्यपेक्षा  
कुलस्थितिः ॥

मनुरपि । ज्येष्ठेत तु एष्टीयात्यिव्यं धनमशेषतः । शेषात्मनुपजीवेयुर्यथैव  
पितरं तथा ॥ ज्येष्ठेन जातमाचेष्टा पुच्छी भवति रुतावः । पिदृशारुद्यग्नैव स तक्तात्  
सर्वमर्हति । यस्मिन्दृशां संनयति येन चानन्यमनुते । सर्व धर्मजः पुच्छः कामजा-  
नितरात् विदुः ॥ पितेव पालयेत् पुच्छान् ज्येष्ठेभादृन् यदीयसः । पुच्छवापि वर्त्तेन्  
ज्येष्ठे आतरि धर्मतः ॥ ज्येष्ठः कुलं वर्जयति विनाश्यति वा पुनः । ज्येष्ठः पूच्छतमो  
कोके ज्येष्ठः सद्विरिहार्हितः ॥ यो ज्येष्ठो ज्येष्ठरुतिः स्थानातेव स पितेव सः ।  
अव्येष्ठवर्त्तिर्यल्ल स्यात् स सम्पूर्णयल्ल वन्मुखत् ॥ यो जोभादिनिकुर्वीत ज्येष्ठो भादृन्  
यदीयसः । सोऽुज्येष्ठः स्थादभागच्च नियमत्वच्च राजभिः ॥

इत्यादिवचननियत्याद् गुणजेष्ठवश्चर्फितया सर्वेषां सहवासः प्रशस्तः ।

धर्मदण्डिकामनया तु विभागः कार्यं इत्याहतुर्मनुप्रवापती । एवं सहवसेयुवा  
एष्यवा धर्मकाम्यया । एष्यतिवद्वर्तते धर्मदण्डिकादर्भा एष्यत् जिया । धर्मत्वं देवार्थन-  
रूपतात्यैव सहवासे एष्यत्वाववात् । तथा च शृङ्खलातिः । एवपकेन वसतां पिदृश-  
विकार्त्तनम् । यस्म भवेदिभागानां तदेव स्याद् गृहे गृहे । इति । यतु संयहकारेण-

भिहोचादिधर्मद्विक्रिया धर्मद्विशब्देन मृद्गत इत्युत्तम् । यदाह । क्रियते सं विभागेन पुचार्वा पैठकं धनम् । स्वते सति प्रवर्तने तस्माद्वर्णाः पृथक् क्रिया इति । प्रवर्तने साधने अभिहोचादिक्रिया इति विशेष इति । ततु जन्मनैव पुचार्वा पितॄधनस्त्वादिभागात् प्रागपि औतस्मार्तकर्माधिकारं प्रतिपाद्यद्विरक्षाभिः प्रागेव प्रत्यासि । तस्मात् पद्ममहायज्ञादिधर्मेत्वं धर्मशब्देनात्र याद्वाः ।

8. दत्तासु भगिनीषु चेति तु न कालार्थं किञ्चु तासामवशं दानार्थम् । यथा, यस्मिंश्च यिद्वायेष्वा दत्तयां पैठकं ततः । आदभिलक्षिभक्षयमृद्गी न स्याद्यथा पिता इति ॥ नारदवचनमृद्गादानावद्यक्षकालार्थं न विभागकालार्थम् ।

9. पिता च यदि स्वेच्छया पुचान् विभजति तदापि निरञ्जशेष्वा नोपादेया किञ्चु । ज्येष्ठं वा अेष्ठभागेन सर्वे वा स्यु समांश्विन इति । पक्षयोर्मध्ये यः पक्ष इहः स यात्रा इति योगीश्वरवचनार्थः ।

ज्येष्ठं अेष्ठभागेन सधमं सधमभागेन । कणिष्ठं कणिष्ठभागेन । सर्वे वा ज्येष्ठ-दयः समांश्विनः कार्या इति विज्ञानेश्वराचार्याः ।

प्राचार्ष्णु स्वेच्छयेति पृथक्यपक्षान्तरं ज्येष्ठादिभागसमभागौ च दौ पक्षाविति पक्षयमत्वं ज्येष्ठं वेति प्रथमो वाशब्दः स्वेच्छयेति पक्षापेक्षया समझसो वस्त्र-मालापक्षापेक्षये क्रियः स्यादित्याङ्गः ।

उपपत्तिच तत्र वदन्ति । पितैव वा स्वयं पुचान् विभजेद्यसि स्तिः । ज्येष्ठं वा अेष्ठभागेन यथा वास्य मतिर्भवेदिति ॥ नारदवचने । ज्येष्ठं वेत्यादिनैकं विषम-विभागप्रकारमुपन्थस्य यथा वास्येत्युक्तेरन्योऽपि न्यूनाधिकभागः पितुरिच्छयालीति गम्यते । इहारीतोऽपि । जीवन्नेव वा विभज्य वनमाशयेद् उद्धाशमं वा गच्छेत् स्वस्यं वा संविभज्य भूयिष्ठमादय वसेद् यद्यपदशेष् पुनर्जेष्वा गृहीयादिति । उद्धाशमः पादिवज्यम् । उपदशेद् ब्रह्माभावेन क्षीणो भवेत् । अत्रापि स्वस्यं वेत्यादिपक्षान्तर-मुक्तम् । तस्मात्तदेकमूलकतानुरोधेन योगीश्वरवचनेऽपि तत्प्रयत्नायेच्छयेति पृथक्-पक्षयत् युक्त इति ।

तदसत् । वाशब्दसावद्वेषापि बुत्तत्तेगोक्तसमझसः । या चोपपतिवक्षा साप्त-युक्ता । यदि वचनान्तरोपात्तपक्षान्तरसंयहार्थमिच्छयेत्वस्य भवेदुत्तराद्यं वर्थमेव स्यादुक्तपक्ष इथस्यापि वचनान्तरोपात्तत्वादिच्छयेत्वेन तयोरपि संयहकम्भवात् । तदितरपक्षसंयहार्थले मन्दप्रयोजनता स्यादेव । इच्छाया निरञ्जशेषेनाग्नियमवारक्षाय वचनान्तराकोचनं विग्रहं तदर्थाग्निर्वाहात् । खोपात्तपक्षदये व्यवस्थाग्निरासार्थतये-च्छयेति व्याख्यायमाने वचनान्तराकोचनानावद्यक्षकालात् । न च विकल्पेत्वैच्छकाभे इच्छयेति ग्निर्वर्थकमिति वाचम् । उत्तराद्वैयर्थ्यपेक्षया व्यवस्थितविकल्पनिरासाय व्यवस्थोपात्तपक्षदयविवरयत्वा तदनुवादस्यैवोपपत्ततरत्वात् ।

नारदायेष्वरमूलकता तु विज्ञानेश्वरव्याख्यागेऽपि नापैति । तदुक्तपक्षदयस्य वच-नान्तरेवपुपादानात् । न च निर्गंगेच्छमाचमेव पक्षान्तरं योगीश्वरवचनार्थो-

इत्यति वाचम् । अथयाग्रास्तकारी च न विभागे पिता प्रभुरित्वस्य निर्विषयतापत्तेः । इत्थामात्रस्य शास्त्रीयलेऽयथाग्रास्तकारित्वाप्रसक्तेः । जीवद्विभागे तु पिता नेत्रं पुच्छं विशेषयेत् । निर्भाजयेत् चैव कमकस्तात् कारबं विनेति । कात्यायनवचसोऽपि निर्विषयता स्यात् इत्थया एकाकारवाचात् । न विशेषयेऽशास्त्रीयज्येषुभागाद्यतिरित्तैष्ठिकविशेषवन्नं न कुर्यात् । कारबाहु शास्त्रोक्तं पातिलादिकं विनाउकस्तात् कीर्त्तात् सुभगापुच्छेष्टादिना वा न निर्भाजयेऽहागरहितं न कुर्यादित्यर्थः ।

यत् । न्यूनादिकविभक्ताणां धर्मः पितृस्तः कातः । इति योगीचरवचनं तदपि धर्मोधर्मोदग्नेत्वच्चेत् पिता छातः छतरद्व रुपो न निवर्तते । अधर्मस्त्वयथाग्रास्तकातो निवर्ततश्वेतभिप्रायहस्ति विश्वानयोगिभिरेव आख्यातम् ।

आधितः कुपितश्वेतादिवचनानुरोधात् । एवम् । समन्यूनाधिका भागाः पिता येवा प्रकस्तिताः । तथैव ते पाणीया विनेयात्ते स्तुरन्त्यथा ॥ पितृव तु विभक्ता ये समन्यूनाधिकैर्ज्ञैः । तेवा सर्व धर्मः स्यात् सर्वस्य हि पिता प्रभुरिति ॥ छहस्तिरारद्वचने धर्म आख्यये । अेषादिविभागेऽपि पिता अेषादिभ्यो दक्षेऽन्तर्गुणयो न कार्यः । समांशविभागे वा अेषादिभिरिति तात्पर्यार्थः अतएव नारदस्तेवां स एव धर्मः स्यादित्वाह ।

अेषादिभागस्य मनुगोत्ताः । अेषाद्या विंश उद्धारः सर्वद्वाष यद्दरम् । सतोऽप्त्वैः सम्बन्धमस्य स्यात् तुरीयकु यवीयस्य इति । समांशपक्षं वौधायन आह । मनुः पुच्छेष्टो दायं अभजदिति समेऽप्त्वैः सर्वेवामविशेषादिति । मनुः पुच्छेष्टो दायं अभजदिति शुतौ विशेषामववात् सर्ववां पुचावां समोऽप्त्वैः इत्यर्थः ।

10 यदि पिता अेषाद्या समांशेन पुचाण्डिभजते तदा खपतीभ्यः पञ्चसममध्यं इत्यादित्वाह याप्तवक्त्वाः । यदि कुर्मात् समानंशान् पलगः कार्याः समांशिकाः । न इतरं खीष्मनं यासां भर्जा वा अशुरेष वा । यासां भर्जा अशुरेष वा खीष्मनं प्रीत्वादिना न दत्तम् । भर्जादियहस्तमुपणक्षयस्य वक्ष्यमावस्त्रीधनशून्या इत्यर्थः । तासां पलीनां पुच्छसमांशभागमावां नियन्ते । तथा च यदा अेषाभागादिनापि पिता पुचान् विभजति तदापि अेषाभागाद्युद्गुतोऽनुतोऽनादादुद्गव्यसमुदायात् पुच्छसमानेवांशान् पलगो जभन्ते न खच्येषुभागादिकभिर्वर्थः पर्यवस्थति ।

यत् पलगाः खोऽदारः परीभाष्टादिस्तमपि पली जभते । तथा आप्तस्तमः । परीभाष्टच ग्रहेऽन्तरो भार्याया इति । परीभाष्टमोजनपात्रादि यदसाधारणं वशा अलङ्कारोऽप्यसाधारणजडिवेषयिष्यते ।

न च पक्षद्वयेऽप्येतावता पुच्छसमांशिलं पलीनां विज्ञानेष्वरेष्वोक्तन्तर्हि यदि कुर्मात् समानंशानिति समानंशानुवादो वर्यः पलगो अेषांश्चादि न जभन्ते इत्येतावत्पाचमेव वाच्यमिति युक्तम् । यतः एवं समुद्गुतोऽनादे समानंशान् प्रकस्ययेत् । उद्धारेऽनुद्गुते त्वेषमियं स्वादृशक्षयना ॥ एकाधिकां हरेष्वेष्टः पुचोऽप्यर्द्धक्षतोऽनुजः । अंशमध्यं यदोयांस्य इति धर्माच्चविद्यत इति मनुगा । शंश्टी वा पूर्वजः स्वादेष्वक्षन्

इतरेवामिति । गौतमेन अथ भाद्रुबां दायभागो द्यंशौ इतेष्येष्टो गवाचस्य चाच इत्थमभावयो महस्य कनिक्षस्य कार्बायसं महोपकरणानि च मध्यमस्तेति । विद्य-  
क्षेण व्येष्टस्यांशेऽधिको देयः कनिक्षस्य वरः सतः । समांशभागः श्रेष्ठः सुरप्रसा भगिनी तथेति ॥ नारदेन चोडारम्भते विषमभागमाचमुक्तं तथदात्रियते तदा पनी-  
नामंशाभावप्रतिपादनार्थं यदि कुर्यात् समानंशानिल्युक्तमिति न देष्वः ।

अतएव भाद्रुबामविभक्तानां द्युत्यानम्भवेत् सह । न तच विषमं भागं विता द्यात् कथमनेति मनुजा सर्वेषां भाद्रुबां ब्राह्मणे यदि सह समानमेवोत्यानमुद्योगो भवेत् तदा पितुर्विषमविभागदानप्रतिषेधकमनुवचनवात्स्वाने जीमूतवाहनेनोक्तमु-  
डारलु पित्रा दातव्येव । तस्य विनागरुपत्वाभावात् ।

न्यूनाधिकविभागस्यैव निषेधादिति । तस्माच्चेष्टं वा अेष्टमागेनेति याच-  
वल्लवायुक्त उज्जारेऽपि समांशभागिता पुच्छामस्येवेति तत्त्वायीदं वचनं प्रवर्ततेव  
द्यंशादिपक्षे परं न प्रवर्तत इति विज्ञानवेगिनामाश्रयः ।

इते तु स्त्रीधने इते तर्जं प्राच्यवेदित्यचार्डदानं वक्षते । यद्यपि तदाधिवेद-  
निके भर्ता दीयमाने वक्षते तत्त्वाप्याकाङ्क्षायां समानन्यायत्वादत्यापि योत्यन् ।  
बौधायनः । बङ्गनामेकधर्माबानेकस्त्वापि यदुच्चते । सर्वेषामेव तत् कुर्यादेकरूपा हि  
ते स्मृता इति ॥

भाद्रुबामविभक्तानामित्वादिमनुवाच्ये सहोत्यानं सर्वेषां विभागप्रार्थना यदि  
भवतीति जीमूतवाहनेन तदनुयायिणा दायत्ववहता च वात्सातम् । यदि पुनः पितरि  
जीवति पुच्छा एव विभागमर्थयन्ते तदा विषमविभागः पित्रा न दातव्य इति वदता ।  
तच सहशब्दवैयर्थ्यं उत्यानशब्दस्य चोद्योगवाचिनेऽपि भागप्रार्थनापरत्वमन्यायमित्य-  
स्वात्स्वानमेवादर्तव्यम् । तथा च । समानार्थसमुत्याने विभागलु ततः स्मृतः । इति  
योगीश्वरवचःसमादेऽपि जाभते । तस्यासदभिमतार्थवैयोपपत्तेः ।

इते तर्जमित्वाप्यर्जशब्दः समप्रविभागवचनो न भवति अतच यावता पूर्वदत्त-  
मित्वानीं दीयमानस्य सममवति तावहेयमिति मित्राद्वारायासुक्तं । तत्त्वायमाश्रयः  
यद्यपि नपुंसकस्त्वार्जशब्दस्य पुंस्याऽर्जेऽर्जं समेऽप्यक इति कोषात्मांश्वाचित्वमिति ।  
तथापि कदाचित् तासां पुच्छाधिकधनलं कदाचित्तदूनधनत्वमव्यवस्थितमर्जनियमस्य  
चादृतार्थं मा प्रसाङ्गीदिति पुच्छस्त्वाचित्वायमेव तात्पर्यमिति ।

अत्र मदनरत्नाकर आह । पलग्रहिति बङ्गवचनात् प्रतिपत्ति समानंशान् विता  
ग्रहीयात् तु ताभ्यः पृथक्क्षात्यांश्चो दातव्यः । जायापत्रोर्विभागो न विद्यत इति  
हारीतवचनविदीक्षापत्तेऽर्थिति ।

तत्र । नाच जायापत्रोर्विभाग उच्चते येन हारीतवचनविदोऽधः स्यात् किञ्चु  
पत्तेव पुच्छविभागत्वमये ताभ्यस्त्वमांशदानं प्रीतिदानवत् । अतएव स्त्रीधने इते तर्ज-  
मिल्युक्तमिति न कोऽपि देष्वः ।

11. यत्तु जीवति पितरि पुच्छस्या विभागः स वैष्णवात्रवद्वाल्मातुर्निर्दिते  
इत्यतीति मनुवचने समशब्दागुणात्र त्वमर्थ ।

येऽपि पितुरुद्धं विभागः सेऽपि समर्थः । पूर्वोदाहृतमनुवच्चने सममित्यभिष्ठानात् । इतीतेऽपि । समानो मृते पितरि दिक्षविभागः । पैठीतस्तिरपि । पैठके विभव्यमाने दायाद्ये आढूकां समै विभागः । याह्वाह्वल्पोऽपि । विभजेरन् सुताः पित्रोरुद्धमृष्टवस्त्रं समस् । पित्रोरुद्धमिति काजः सुता इति वर्त्तारः सममिति प्रकारनियम इति मिताक्षानात् ।

ननु मनुजैव पितुरुद्धं विभागमुपक्रम्य व्येष्टरव तु शृणीयात् पित्रं धनमश्वेतः । श्रेवाल्लम्बुपजीवेष्यर्थद्यैव पितरं तथेति सहवासपक्षं मुख्यमुक्ता व्येष्टस्य विंश उड्डार इत्वादिन विषमविभागोऽप्युक्तसत्कारं समनियम इति चेत् । उच्चते । यद्यप्यवं विषमभागो जीवत्यजीवति च पितरि श्राव्याद्वृत्ताद्यापि वचनान्तरानुरोधात्मकौ सम शब्देति नियमः । अस्यर्थं सोकविदिष्टं धर्मसम्पाद्यरेत्र त्विति येतीश्वरवचनात् ।

अत्र सोकविदेन युगमुच्यते । युगान्तरे धर्मसम्पाद्य युगान्तरे यदिदिष्टं प्रतिविडं तात्त्वाचरेदिव्यर्थः । अन्यथा धर्मत्वाल्लग्न्यत्वयोर्थाताः । श्राव्यविहिते तदभिष्ठविदेषो वाधितरव । तदभिष्ठया मरजनविदेषस्तु नाल्लग्न्यत्वापादकोऽपीषोमादिहिंसादावतिप्रतिष्ठादित्यादिदूषकं स्यात् । अतरव भिताक्षरायां मधुपर्क्षपुष्टवधगवाजभादिकाजिवर्ज्ञमेव सोकविदिष्ट्येतोदाहृतम् ।

कलिवर्ज्ञेषु च पुनरुदाहादिकमक्षतादीनां यत्त्रोक्तं तत्र व्येष्टांश्चाद्वारादिकमपि । यथा चादिपुरव्वे । ऊर्ध्वाः पुनरुदाहो व्येष्टांश्चो गोवधस्तथा । क्लौष एव न कुर्वीत आढ़जायां कामद्वयः ॥ स्मृतिसंग्रहेऽपि । यथा नियोगधर्मो नो नानुवश्या बधोऽपि वा । तथोऽकारविभागोऽपि नैव संप्रति वर्तते ॥ नियोगधर्मो आढ़भार्यायां वाग्दत्तायां मृतपतिकायां गुर्वादिनियोगेन विधिना गमनम् । मैत्रावदयों गमनवस्त्रां वशमालमेतेति विहितो गोवधः । सम्भवति क्लौषौ ।

अतरवपलम्बो जीवन् पुच्छेषो दायं विभजेत् सममिति खमतमुक्ता व्येष्टो दायादिवेकाइति छात्यधनयहयां व्येष्टस्येकीयमतमुपन्वयस्य देशविशेषे सुवर्णं गावः छात्यमौनं व्येष्टस्य रथः परोभाष्टं पितुर्गृहेऽप्युक्तारो भार्याया छातिधग्नेषेकमत्तेनैवोऽकारविभागं दर्शयित्वा तस्याल्लविप्रतिविडमिति गिराक्षतवान् । श्राव्यविप्रतिवेष्टस्य खयमेव विष्टवान् । मनुः पुच्छेषो दायं अभजदिवविशेषेण अूर्धत इति । तस्मात् विषमविनागः श्राव्याद्वृष्टेऽपि कालावनुष्टेयः ।

यत्तु भिताक्षराद्वाता अुतिविरोधेष्युक्तं तदिचार्यम् । अुतिविरोधे हि सति युगान्तरेऽपि तस्यानुष्टाने तद्वोधकवचनानां सर्वथाऽप्रामाण्यमेव स्यादिति कलिवर्ज्ञतयोपव्याप्ते विज्ञः । न वात्यनं अुतिविरोधोऽपि । अविशेषमवयो सति समं खादन्त्वत्वादिति न्यायत्वाभ्यात् समतस्य ।

स्मृतिविक्रिकाशान्तु बौधायनोदाहृतं विषमविभागप्रतिपादकमपि अुत्वन्तरं विखितम् । व्येष्टलादाधिक्षेऽपि चुल्मन्तरमिताह स एव । धनमेकमेकसुद्धरेज्येषु तस्मात् व्येष्टं पुच्छं धनेन निष्वसायतीति अुतेदिति । धनमेकमेकमिति वदन् अुति-

वाक्यगतं धनेनेत्रेकवचनं विवक्षितमिति स्मरयति । निरवसाययति तोषयतीत्वर्थै  
इति यज्ञेन ।

जीमूतवाहनादयल् यदा भक्षयतिश्चयादिना आटूङामगुमतिस्तदेकारादिविषम-  
भागेऽतश्चवाचतनानां भक्षयाद्यभावादुद्भाराद्यईच्छेभावाच समभागेव लोके दृश्यते  
इत्यादिना यज्ञेनानुमत्यनुमतिभ्यां विषमसमभागयोर्वर्वस्यामाङ्गः ततु तथा सति  
पुच्छायाएव प्रयेत्जकलापत्तेः पूर्वार्जविरोधादनादेयम् । पित्रिच्छायाः स्त्रियपक्षा-  
क्तरपरमन्तु प्रागेव निरासि ।

12. पित्रा पुच्छेभ्यः स्त्रार्जितधनविभागं इदता स्यमंशदयं याह्नित्याह  
नारदः । द्वावंशौ प्रतिपदेत विभजनात्मनः पितेति । दृहस्यतिरपि । जीवदिभागे तु  
पिता गृह्णोत्तंशदयं स्यमिति ।

पितुरंशदययाह्नमेकपुच्छविषयमित्याहतुः शङ्खलिखितौ । स यदेकपुच्छः स्थाद  
दौ भागवात्मनः कुर्यात् । अवहारपारिजातकार इदं वचनमेवं व्याचष्टे । एकशब्दो  
उच्चं श्रेष्ठवाची । तथा च यदि पुच्छो गुणवत्तया धनार्जिनशक्तलदा तेन सह विभागे  
पित्रांशदयं याह्नमिति ।

जीमूतवाहनस्तु एकस्य पुच्छः एकपिठक औरस इति यावत् । न मुनः  
एकः पुच्छो यस्येति बड़ब्रीहिस्तस्यान्यपदार्थप्राधान्येन वष्टीतत्पुरुषाद् दुर्बलत्वात् । तथा  
च होत्तेजस्य व्याघ्रपिठकस्य दिपिठकत्वात् । तथा चौरसपुच्छरूपः पिता स्त्रियोऽध्यने  
भागदयं गृह्णीयात् तु होत्तेज इति व्याचख्यौ ।

तदस्त् । तथा सति पितामहधनगोचरतास्य स्थात् तत्र च सदृशं स्वाम्यं पिता-  
पुच्छयोरित्यौरसस्यापि पितुः पुच्छसमांशताया अवस्थापरिष्यमाणत्वात् । तथा चागत्या  
बड़ब्रीहिरेवास्येयः ।

सिताद्वाराक्षता त्विदं वचनमनाहतमेव ।

कात्यायनः । द्वांश्चहोर्ड्बहोरो वा पुच्छवित्तार्जिनात् पिता । मातापि पितरि  
प्रेते पुच्छतुल्यांशमागिनीति ॥ अत्र जीमूतवाहनः । पुच्छस्य वित्तार्जिनात् पुच्छार्जितेऽपि  
वित्ते स्त्रार्जितइव पितुरंशदयमित्यस्यार्थो न तु पुच्छ वित्तस्य तयोरर्जिनादिति ।  
अनर्जितपुच्छस्यापि भाद्रभिर्विभागे वित्तार्जिकत्यांशदयस्येभुत्वात् । अतो विभागार्ह-  
समन्वित विद्यमानेऽर्जिकस्य द्वांशादिहरत्वमसति तु सर्वहरत्वमिति वाच्यं तथा सति  
पितपुच्छदयोः प्रमत्तगीतता स्थात् । किञ्चार्जनं स्त्रियोत्तुभूतो व्यापारः । अर्जनं  
स्त्रियोत्तुभूतो विप्रतिविद्धमित्यभिधानात् । न च पुच्छेषु स्त्रियोत्तुभूतो विप्रतिविद्धमित्यभिधानात् । न  
च पुच्छस्यार्जिकत्वादेवांशदयप्राप्तेः पितुसामाहचनाद्वेऽपि वचनान्तरादेव भागदय-  
सिद्धेवचनमिदमनर्थकमिति वाच्यम् । एतदचनमन्तरेणापि पुच्छने पितुर्भगदय-  
प्राप्तेरस्य सार्थकात् इत्याह ।

तत्र । द्वांश्चपेक्षया स्वर्युद्धलक्षणावतो भवदुक्तसमाप्तस्यायुक्तत्वात् । यच्चार्जित-

पुच्छस्येवादिद्वद्वयं तदव्यसम्भवम् । भावमागाद्यविषयकालादस्य । पिण्डधनप्रकाशत् । न चैवं पुच्छपदं अर्थं विचार्जनस्ये द्युष्टहरवे हेतुलोपपत्तेऽरिति वाचम् असात्मग्रार्थत्वात् । यतः पुच्छेऽपि विचारत् तेनैवार्जितस्येन परतमः स्वार्जितस्येन पितुरंश्वदययाहवावयहो न भवतीत्वच तात्पर्यम् । यचार्जनपदवैरूप्यं तदप्यसत् । पुच्छेऽपि पिण्डस्येष्टत्वात् । न च र्वस्वस्यानश्विदोऽप्तः पिचाद्यस्ये तस्य तात्पर्यात् । पुच्छाद्यदानस्य तद्वयसिङ्गान्तस्य भाव्यप्रदर्शितचोदकविरोधयुक्तिसिङ्गत्वात् । अतएव पुच्छकान्त्यादानादिविधयो मुख्यार्थादेव न पुच्छादिपरतम्भीकरणारूपग्रंथादानादार्थः ।

13. इदस्य पितुरंश्वदययोपादानं स्वार्जितविषयं न पिचार्जितविषयम् । भूर्या पितामहेष्टापात्ता निबन्धो ऋथमेव वा । तच स्यात् सदृशं स्वाम्यं पितुः पुच्छस्य चोभयेरिति याज्ञवल्क्येन तच पितापुच्छयोः समस्याभिधानात् समांशभागित्वमेव ।

तस्य द्वयमर्थः । भूः शालिक्षेचार्जितका । निबन्धो रात्रामसुकस्यैकस्मिन् पर्ण-भरकज्ञमुकभरकादावियन्ति पर्णादीनि देयानीति शासनारूप्तया यद्दृष्टित्वेन दीयते तदुच्छते । तथा इवं सुवर्णादि तच पितुः पुच्छस्य च स्वाम्यं हि शब्देन प्रसिद्ध-नित्युच्छते । अन्मनैव स्वत्वात् । तदपि सदृशं तुल्यमतोऽत्र पुच्छादां न पिचार्जितश्वपि विभागोऽश्वदयनियमस्य पितुर्नालीति ।

द्वृष्टिस्पृशतः । इवे पितामहेष्टापात्ते स्थावरे जड्जमे तथा । समर्मश्वित्वमाल्यातं पितुः पुच्छस्य चैव हि ॥ ३८ ॥ पिचास्यमर्वांशो याज्ञो न तु स्वार्जितवदंश्वदयं विषयम-विभागपद्मान्त्रयं वेत्यर्थं इति मदनरत्नकारः ।

जीमूतवाहनस्तु यत्र इयोर्व्वार्जितविषये पितर्येकः पुच्छसुत्याद्य नष्टोऽन्तर्व जीवति । पञ्चात् पितापि मृतस्तत्र पिण्डधनं प्रवासत्ते: पुच्छस्य सर्व प्राप्नोतु न तु प्राप्त्युपिण्डकपौचक्षस्य विप्रवर्णात् तद्वाधार्थं सदृशं स्वाम्यमिति वचनम् । यथा पैतामहधने पितुः स्वाम्यं तथा तत्पुच्छस्यापि । न तु सन्धिकर्वविप्रवर्णयुक्तो विशेषः । पार्वत्यविधिना॑ पिण्डदात्रत्वेन इयोरविष्टेवादित्यभिप्रायः । अतएव मृतपिण्डकः प्रपौचाऽपि प्रपितामहधने पुच्छपौचाभादां सह तुल्यवदेव स्वामी । पिण्डदानाद्यविष्टेवात् । जीवति तु पितरि पुच्छादां तज्जनस्याम्ये सपुच्छभावृदयविभागे सत्पुच्छामपि विभागः स्यात् स्वामित्वसाम्यात् । तस्मामृतपिण्डकपौचविषयकमिदं न पौचमात्रविषयकं न चाप्रकान्तत्वात् तदर्थकात्मं प्रागनेकपिण्डकालानेव प्रकामात् । सादृशवचनमन्तु स्वार्जितवत् पित्रिच्छया विभागभावार्थम् । यथाह विष्णुः । पिता चेत् पुच्छान् विभजेत् तस्य खेच्छा स्वयमुपात्तेऽर्थे । पैतामहे तु पिता पुच्छयोरूप्यं स्वाम्यमिति । अतः खेपात्ते पिता नूनाधिकभागः पुच्छानिच्छया विभजतु पैतामहे तु तुल्यस्वच्छन्द्वच्छिता । एतावतैवैतद्वचनेऽपपत्तौ सामान्यप्राप्तं पित्रिच्छया विभागकालात्मं पितुच्छ भागदयं न निविष्यते । जीवतिपिण्डकपौचविषयतापि वा धारेव्वानुमतास्यालां तथापीच्छालात्म्यूनाधिकभागनिरासार्थत्वै । न तु पुच्छेच्छया विभागोऽश्वदयाभावस्य पितुरनेन वेष्ठते । किञ्च अमविद्यागुणव्येष्टो द्यंशं दायादवास्त्रयात् । समांशभागित्वन्ये तेषां

पिण्डसमलु क इति दृहस्यतिवचनात् पितापि स्वपिण्डनरकनिवर्त्तको गुणव्येषुः स्वभाष्टिः सह विभागे पिण्डसमत्वेन यचांशैदयभावृ तत्र पुच्छैः सह विभागे पितैवांशैदयं पैतामहेष्वनेनप्रोति स्वद्वारकरव पुचाण्णा तद्वनस्वन्वस्वेति भवते सुनीनाम्बवचनमनुचितम्। तस्मादिच्छया विभजेत्सुतानिति पित्रिच्छाया विभागकालत्वं द्वावश्वौ प्रतिपद्येतेवादि वचनोत्तां पितुर्भागदयस्वाविशिष्टं पितामहेष्वनेऽपि। न्यूनाधिकभागमात्रम् एव पुच्छै स्वाक्षर्येन न भवति। इवे पितामहेष्वात्मे स्थावरे जड़मे तथा। समर्मश्वित्वमाल्यात्मितुः पुचस्य चैवहीति दृहस्यतिना पितापुच्येत्साम्बस्यैवाहय विधानात् कथं पितुरचायांशैदयमिति चेत्त। अंशित्वमंशकर्त्तव्यं समं न तु स्वेच्छया सार्जितवद्यनाधिकांशकर्त्तव्यमिति तदर्थात्। न त्वंश्ववत्त्वं सममिति। स यदेकपुच्छै स्वादिवेकपुच्छपदस्यैरसपरत्वस्योक्तालाङ्कुष्ठिपित्रिभिरपायं वा समांशित्वाभिधानमित्याह।

तदनादेयम्। सन्दर्भविरोधात्। तथा हि। अनेकपिण्डकाणां पिण्डद्वारकभागकल्पनामभिधायनन्तरं भूया पितामहेष्वात्मेत्युक्तां तत्रास्म्बवेव पौत्राणां पैतामहेष्वने पितरि जीवति विभागभावो वा। तदिच्छयैव वा स्वार्जितवद्विभाग इति शास्त्राचयमेवोत्तिष्ठति। यन्मिताद्वारायामुक्तां तद्विराकरणार्थमेवेदं वचनं तद्वाल्यान-रीया सङ्कर्षते। प्रभीतपिण्डकपौत्रविषयकत्वेन सङ्कोचोऽप्यु कुतः। न च धारेश्वरावधारितरीया पौत्रमात्रविषयकतायामपि न्यूनाधिकभागमात्रस्य पित्रिच्छायातनिरासायेदं न पित्रिच्छाकालतदीयभागदयस्याविशेषप्रवृत्तसेति वाच्यम् विनिगमनाविरहात्। किञ्च। पित्रिच्छाया हेतुलमिच्छया विभजेदिति तृतीयानिर्देशाच्छाव्दमार्थिकन्तु तस्याविभागकालोपलक्षणात्मम्। तत्र शास्त्रं हेतुलम्बाधमानेनानर्थिकं कालोपलक्षणात्मं न वाध्यत इति चित्रम्। सति च स्वाम्बसाम्बे पुच्छेच्छाया निमित्तत्वं तत्पूत्रस्य तस्याः कालोपलक्षणात्मकुलेषातिकायापि तद्वारम्।

ननु पितुरंशैदयं पिण्डत्वप्रयुक्तं न स्वाम्बाधिकप्रयुक्तं नार्यजकलप्रयुक्तं तस्य येन चैवां स्वयमुपार्जितं स्थात् स हांशमेव ज्ञानेतेति वाशिष्ठसाधारणवचनादेव सिङ्गेद्वावश्वौ प्रतिपद्येतेति विशेषवचनानर्थकवप्रसङ्गात्। तस्मात् पित्रिजितेऽपि ज्ञेषुपुच्छत्वप्रयुक्तं यथा तस्यांशैदयं विशेषवचनात्तथा पैतामहे पितुरपि। अतयवाक्यते पुचार्जितेऽपि पितुरंशैदयमिति चेत्। सत्यम्। परन्तु निःसङ्कोचप्रवृत्तस्वाम्बसाम्बवचनेन तद्वाध्यते। पुचार्जिते तु पितुरंशैदयभावो भवदुदाहृतपुच्छवित्तार्जनादिति वचनस्य भवदुक्तार्थद्वयात् प्रागेव अवस्थापितः। न च तद्वचनादशैदयभावेऽपि सामान्यवचनादेव पुचार्जितेऽपि पितुरंशैदयमायात्मिति वाच्यम्। वित्तार्जनस्य तत्र हेतुलोपन्यासवैर्यर्थप्रसङ्गात्। न च तदर्थवादमात्रमन्यथार्जकलप्रयुक्तभागदयस्य वशिष्ठवचनादेव सिङ्गेविशेषवचनानर्थकवापत्तिरिति वाच्यम्। यतस्यार्जकलप्रयुक्तभागदयस्य पुचांशैदयस्यावश्यात् पिण्डत्वप्रयुक्तपित्रिभिरपेक्षया पितुरंशैदिक्यं तथाहय वचनाभावात्।

यत् विष्णुतादिगानौचित्रसुक्तं तद् लिखित् । वाचनिकासाम्बेड्जौचित्राप्रसक्तेः । अद्यत्था अद्यत्प्रयुक्तमंशुदद्यं पितॄत्प्रयुक्ताच्च पितॄरिति अद्यपुच्चसाम्यापत्तेऽस्त्वयायगौ-  
चित्रस्य दुर्बारत्वात् ।

14. मदनरत्नधृतकात्वायनवचनात् सर्वेषां भावृणां पितॄपुच्चाच्च समांश्च-  
यस्त्वामेव मुखभिति प्रतीयते । सकलं इत्यातां यद्वागैर्टङ्गति तत्प्रमैः । पितॄरौ  
आतरत्वैव विभागो धर्म उच्चत इति ॥ अतएव योगीश्वरोऽपि सर्वे वा स्युः समांशित्व-  
इति सर्वपदं प्रायुक्तं अन्यथा समांशित्वा वा कुर्वीत सुतानिति वदेत् ।

15. यस्तु विभागिना मध्ये खच्छवसायेन जीवनसमर्थः पितॄधनादिविभागं न  
जिह्वति तप्त्वायह मनुः । भावृणां यस्तु नेहेत धनं शक्तः खर्कमण्डा । स निर्वास्यः  
खकार्दशात् किञ्चिहत्योपजीवनम् ॥ याच्चवल्पेऽपि । शक्तस्यानीहमानस्य किञ्चिहत्या  
पृथक्क्रिया । निर्वास्यो निःसम्बन्धीकारणीयः । पृथक्क्रियेत्यस्याप्यमेवार्थः । किञ्चिह-  
हत्येति विभागचिक्कत्वेन किञ्चिदसारमपि दत्त्वेवर्थः । तत्पुच्चाणां दायजिह्वानिहत्य-  
र्थवद्दम् ।

इत्यायुधस्तु । कुटुम्बार्थेषु चोद्युक्तास्तत्कार्यं कुरुते तु यः । स भावृभिर्द्दृशीये  
यासाच्चादनवाहनैरिति नारदवचनैकवाक्यतालाभेन मनुवचने स निर्वात्य इति  
पाठं प्रकल्प्य स भावृभिर्द्दृशीतभागैः खस्त्वभागाद्वन्मात्राच्च पूरणीय इत्यर्थ इति  
आत्मातवान् । तत् नेहेतेवादिपदवैयर्थ्यापत्तेऽपेक्ष्यम् । मेधातिथिप्रमुखाचार्थानादत-  
तया पाठकल्पनानौचित्राच्च । पृथक्क्रियेति स्पष्टवचनसम्बादाच्च ।

प्रकाशकारत्स्तु । यो भागिषु धनार्थं आएतेषु प्रमादालास्यादिना नेहेत न  
आप्रियेत साहाय्यं न कुर्यात् । खर्कमण्डा खच्छवपरेण शक्तः साहायकक्षमेऽपि सन्  
स खकार्दशात् खच्छवारजनिताद्वनाद् वहिःकार्यः किञ्चिदुपजीवनं दत्त्वा मूलधन-  
मात्रभागीकारणीय इतीदं मनुवचनं निर्वास्येत्याकेस्पाठमङ्गीकृत्वैव आचर्ये । तदपि न  
युक्तम् । अपिशब्दादध्याहारप्रसङ्गात् । योगीश्वरवचनसम्बादिनोर्थस्य स्पष्टतर-  
प्रतीतिकत्वाच । भवदुक्तार्थस्य वचनान्तरवश्त्वाच ।

16. कात्वायनः । अविभक्ते निजे प्रेते तत्सुतं रिक्ष्यमाग्निम् । कुर्वीत जीवनं  
येन लर्वं नैव पितॄमहात् ॥ लभेतांश्च सपिद्यन्तु पितॄत्वादापि तत्सुतात् । सर्वां-  
शस्तु सर्वेषां भावृणां न्यायतो भवेत् ॥ लभते तत्सुतो वापि निवृत्तिः परतो भवेत् ।  
निजे भातरि तत्सुतं भावृपुच्चम् । जीवनम्भागः । स कीदृशम्भागं लभत इत्यपेक्षिते  
आह पिद्यमंशमिति । तत्सुतो यस्य धनं विभज्यते तस्य प्रपौत्रः । पौत्रस्य प्रलुत-  
त्वात् । परतस्त्वयात्मिक्तिर्भागनिवृत्तिर्भवेत् प्रपौत्रपौत्रो भागं न लभेतेवर्थः ।

अतएव देवलोऽपि । अविभक्तविभक्तानां कुस्त्यानां वसतां सकृ । भूयो दाय-  
विभागः स्यादाच्चतुर्थादिति ख्यतिरिति ॥ वीजिच्चतुर्थमभिव्याप्य दायभाग इत्यर्थः ।  
विभक्तानामपि संसर्गादिगा सहवासे सतीयं अवस्था । वसतां सहेति वचनात् ।

पिद्यमंशनिति कात्वायनोक्तः पितॄदारते । भाग इति द्वितीयम् । अतरवाह

यात्ववल्कः । प्रभीतपिठ्ठकाशानु पिष्टो भागवत्यनेति । पैतामहे धने जन्मना सत्त्व पौचाणां पुच्चैः सहाविश्विलेव यथापि तेन पुच्चवस् पौचाणामपि पुच्चसमर्थ भाग उचितः । तथापि तेषां पिठ्ठारेषां भागं प्रकाक्य स्खपिठ्ठभागाधिकारो न तु पैतामहे धने खतो भगित्वमित्यर्थः । एतदुक्तं भवति अविभक्ता भातरो यदा पुच्चानुत्याय दिश्वस्तास्त्रैकस्य हौ पुच्चावन्येषां विच्छतुराद्या इति पौचाणां वैष्यं तदा द्वावेकं स्खपिठ्ठभागं देधा विभज्य गृह्णीतस्त्रिचतुराद्या अपि स्खपिठ्ठभागमेकैकं चेधादिरूपेण विभज्य गृह्णन्ति न तु पौच्चसह्याद्या पैतामहधनभागाः । अनयैव रीता केषुचिह्न भाद्रम् जीवत्यु केषुचिह्न पुच्चानुत्याय विमर्शेषु विभगाणाः स्खांश्चभागिनेऽन्येषां पुच्चाः स्खपिठ्ठभागिन इति वाचनिकोऽयं भेदः । अतएव वचनमिदमन्यवत्तानुवादकम् उद्घारादिविषमविभागोऽयि वाचनिकः । समांश्वरं तु स्खान्यात् प्राप्तमेवानुद्यते ।

17. यत्र पैतामहमपहारादिना नष्टं पित्रोऽद्वयते तत्र पित्रिच्छयैव पित्रिर्जितइव पौचा विभागभाज इत्याह मनुः । पैठकन्तु पिता ब्रथमगवासं यदाप्नुयात् । न तत्पुच्चभेदेत्पार्जमकामः स्खयमर्जितम् ॥ स्खयमर्जितमिवेतीवशब्दाध्याहारेण योज्यम् । यद्या तत्पितामहाद्रतमनेनवेऽद्रतमतः स्खार्जितमेव जातं यत इति हेतुतया योज्यम् । अकाम इति वचनात् पित्रिच्छयैव तादृशे पैतामहेऽयि विभागो न पुच्चेच्छयेति गम्यते ।

तथा स्खावन्तरमिति । पैतामहं हृतमित्ता स्खशक्त्या यदुपार्जितम् । विद्याशौर्यादिना प्राप्तं तत्र स्खान्यमितुः स्मृतम् ॥ प्रदानं स्खेच्छया कुर्याद् भागच्छैव ततो धनात् । तदभावे तु तनयाः समांशाः परिकीर्तिता इति ॥ हृतमपरैरपहृतं पितामहेन न प्रव्याहृतमित्ता तु प्रव्याहृतमित्यर्थः । स्खशक्त्येतुक्तोः पितामहत्रयानुपस्थेष्योर्वर्थः । तदुपस्थेष्ये त्रुद्भृतेऽर्जकत्वनिमित्तमंशद्यं येन चैषां स्खदमुपार्जितं स्यात् स्खांश्वमेव लभेतेति वशिष्ठवचनात् पिता भजते । इदस्य विद्यादिव्यपि योज्यं तत्र विस्तरेण विवेच्यते ।

अथमत्र निर्गतितोऽर्थः । यद्यपि जन्मनैव पैठके पैतामहे च धने पुच्चपौचाणां स्खान्यं तथापि पूर्वोक्तवचनैः पैठके पुच्चाणां पिठ्ठपरत्वतया पितुस्वार्जकतया प्राप्तान्यात् पिता स्खार्जिते विनियुक्त्यमाने स्खावरं द्विपदस्त्रैवेत्यादिप्राक्प्रदर्शितवचनात् तद्वतिरिक्ते पुच्चरुमतिरवश्यं कार्या । पैतामहे तु निषेधाधिकारोऽप्यस्ति । तदनुद्भृते पित्रोऽब्रुते तु वदिच्छावशवर्त्तितैव पैतामहेऽपीति । मणिसुक्तादौ तु पैतामहेऽपि पितुरेव स्खात्मकं मणिसुक्ताप्रवालानामित्यादिग्राम्लिखितवचनेभ्यः ।

18. अत्र पित्रुपरमानन्तरं यो भाद्रशां विभागः स पित्रोरिति दिवचनादुभयोपरमर्थव पिठ्ठनेऽयि न तु मातुरुपरमो माटधनगोचर इति संयहकाराद्युक्तमादर्त्यम् । पैठकमित्यत्र पित्रोरिदमिलेकशेषकल्पनायां प्रमाणाभावात् । जगन्नां संस्थितायानु समं सर्वे सहेत्यरा इत्यादिना माटधनविभागस्याये वशमाणत्वाचाच माटधनविभागविधौ पौनशक्त्यापत्तेच्च । याज्ञवल्क्येनापि मातुर्द्वितीर इत्यादिना

माट्ठधनविभागस्य विभजेन् सुताः पित्रो रिक्षमिति सम्बन्धो नाभिमतः किन्तु पित्रोरुद्धर्मित्वे । पितुर्श्चमृत्युमिति तु सम्बन्धोऽथान्माट्ठधनविभागस्योत्तरार्द्देनोत्तरोः । अतएव प्रागुक्तश्चलिखितवचने रिक्षमूर्तं हि कुटुंबमित्यादौ मातुरप्येवमवस्थिताया इत्यनेन मातुरपेक्षायाप्यव्यातन्त्रं विभागानधिकारः सेवदाराणां तेस्यामपि जीवक्षयमित्येतदर्थमेवोक्तम् । अतत्वं । आदृशां जीवतोः पित्रोः सहवास्ये विधीयते । तदभावे विभक्ताणां धर्मस्तेषां विवर्जत इति व्यासवचने सहवासविधानमुखेन एषग्रभावनिषेधात् पितृभाट्टजीवनवतस्य विभागनिषेधाज्ञीवतोरिति साहित्यमविवक्षितम् । अतएव एकस्मिन्द्वयि जीवति विभागो न धर्मः किन्तु भयोपरमे ।

पित्रोरभाव इत्यादिवृहस्यतिवचनेऽपि निष्टरजस्ताराणां मातरि जीवन्त्यां विभागस्य माट्ठधनगोचरत्वानुपत्तेत्यभयाभावोक्तविभागस्यैव जीवतोरपीत्यपिशब्देन निर्दिष्टस्य शूलंत्वकोर्त्तनादुभयोरभावे भाट्टविभागः पितृधनगोचरएवेवधार्यते ।

अतएव व्यासो मातरि जीवन्त्यां ये विभागस्य स्य माट्ठप्रधानकर्त्त्वं दर्शयति । यथाह । समानजातिसङ्घाये जातास्त्वेकेन सूतवः । विभिन्नमाट्टकास्तेषां माट्ठभागः प्रशस्यते ॥ वृहस्यतिरिपि । यदेकजाता वहवः समाना जातिसङ्घाया । साप्तब्राह्मीर्विभक्त्यां माट्ठभागेन धर्मत इति ॥ अत्र जातिसङ्घाया साम्ये साप्तब्रानामपि भागविशेषः स्वरूपक्षतो नाल्लिति माट्ठभागत्वविधानं माट्ठप्राधान्यपरमेवेति नार्थं पुत्राणां विभागः किन्तु तमादृशामित्युद्दिश्य विभागः कर्त्तव्य इत्यत्र तात्पर्यम् । तेनैतमाट्ठधनइवाचापि माट्टजीवने पुत्राणां न परस्परं विभागो धर्मः । यतो गौतमाद्युक्ता विभागे धर्मवृद्धिरपि मात्रुपरमएव वेदितव्येति जीमूतवाहन आह ।

तत्पितृधने मात्रभावपेक्षया अदृश्यार्थत्वापत्तेः प्रागेव निरस्तम् ।

यत्पैठकमित्येकश्चवस्थाप्रमाणत्वात् पौनशक्त्यपत्तेत्वं नास्य माट्ठधनपरत्वमित्युक्तं तदप्यदृश्यार्थतापत्तिभयादेकश्चेष्यस्य स्तोर्कर्त्तव्यत्वादयुक्तम् । पौनशक्त्यन्त्ययुक्तम् । पूर्वोक्तस्यापि माट्ठधनविभागस्य विशेषविधानायानुवादेपत्तेः ।

याज्ञवल्क्यप्रवाक्ये तु मिताद्वाराक्षता च मातापित्रोर्द्दनं सुता विभजेरप्तियुक्तम् । तत्र माट्ठधनेऽप्यवाहमाहेत्यतरार्जमवतारथता पौनशक्त्यपत्तिरुद्देश्यम् । ताभ्य चक्तेऽन्त्य इति च दुहित्वावेऽन्त्यः पुत्रादिर्माट्ठधनमृत्यावशिष्टं गृहीयादिति व्याख्याय इत्यत्वं । विभजेन् सुताः पित्रोरुद्धर्मस्त्वयां समनिति । अनेनैव सिद्धमपि स्यद्यार्थमुक्तमित्युक्तम् ।

न चाच पित्रोरुद्धर्मित्येवास्तु सम्बन्धः माट्ठधनविभागस्योत्तरार्द्देनमित्यानात् पितुर्श्चमृत्युमिति पर्यवस्थति । तथा च ताभ्य इत्यादेनिरर्थकानुवादत्वमपि न प्रसम्भवतीति वाच्यम् । ऋक्यऋणपदयोः सप्तमन्त्यिकार्थत्वात्तदाकाङ्गाणां खवक्षेपात्तपित्रोरिति पदानुषङ्गस्यैव परिशेषवागतार्थिकपितुःपदान्वयापेक्षायाभ्यर्हितत्वात् । तदंशेन तु ताभ्य इत्यस्यानुवादत्वस्थायाप्यभ्युपगमौचित्यात् । ये त्वन्वयपदं दुहित्वावयदौहित्वादिप्रत्येन व्याचक्षते तक्षते तु वैर्यशब्दैव नाहिः । तदेतदिस्तरेण

स्त्रीधनविभागप्रकाशे प्रपञ्चयित्यामः । शङ्खलिखितोऽपि मातरि जीवन्यामस्तात्मग्रन्तु मानवद्वनं तद्दनगोचरमपि सञ्चालितश्व ।

भाद्रूणामित्यादिव्यासवचनमपि सहवासप्राशस्थमाचमुभयजीवन आहेति जीवतोरिति साहित्यविवक्षायामपि न दीषः । वन्नुतस्तु पित्रोरुरुद्धमपि ज्येष्ठश्व तु गृहीयादिति सहवासण मुख्यादिभागस्य च धर्मवृद्धर्थत्वान्मातरि जीवन्यामपि धर्मस्य प्रक्षमहायज्ञादेशवृक्षकालात्तद्वद्यर्थं विभाग उचितश्व ।

यत्तु पित्रोरभाव इति ब्रह्मस्तिवचने निवन्तरजस्तायां मातरि जीवन्यामित्याद्युक्तं तत्रोच्यते । उभयजीवने सहवासः प्रशस्तदमावे विभाग इति पूर्वार्द्धेनाभिहिते । मातर्यनिवन्तरजस्तायां सन्तानसम्भवात् तद्वत्तिलोपस्य च ये जाता येऽप्यजातात्मेत्यादिवचनेन गर्हितलव्विवन्तरजस्तायान्तु तस्यां तदप्रसक्तेष्यतस्यै हे पितरीब विभागः प्रशस्त इति तस्यार्थः । तथा सति निवन्तरजस्तायां तस्यां तदीय-कृक्षयाधिकारिकन्यासन्तानस्यासम्भवात्सतरान्तदिक्षया तद्दनविभागोऽपि पुचाणामुचित इति मातृधनगोचरताप्यस्य वचसः सम्भवतीति न किञ्चिदेतत् ।

यदपि व्यासवृहस्यतिवचने र्माटप्राधान्यं सापलविभागस्योक्तन्तमाप्यविशद्म् । यथा हि । जोवतोरस्तत्त्वः स्यादारथ्यामिसमन्वितः । इत्यादि वचनवृश्चादिभागोत्तरपिलभाटपारतन्वं तथैतद्वचनवृश्चामाटभागश्वायमिति बुद्धा तदाज्ञावृश्चदतया तज्जीवनावधि खेयमित्येतावता पिलधनविभागोऽपि तस्याज्ञीवन्यामनधिकारः कुतस्य इत्यामधिकेन ।

19. जीवत्यिटकविभागे पित्रा यथा स्वपञ्चांशसमांशभागिन्यः सपलः कार्यात्मथा तदुपरमविभागोऽपि पुचैस्ता: स्वसमांशभागिन्यः कार्या इत्याह याज्ञवल्क्यः । पितुरुरुद्धं विभजतां माताप्यंशं समं इरेत् । यदि स्त्रीधनन्दत्तम भवति । इते त्वंशर्वद्वारिणी कार्येति वचनादप्यत्तार्द्धशब्दो न समविभागवचनः । किन्तु यावता पुचसमांशिता भवति तावदेव विवक्षितम् ।

अत्र माटपदस्य जननीवाचकत्वाज्ञापुचसपलमाटपरत्वमपि । सक्षम्भुतस्य माटपदस्य मुख्यगौणोभयार्थत्वानुपपत्तेः ।

यत्तु । असुतालु पितुः पलः समानांशाः प्रकल्पिताः । पितामहाच्च सर्वास्ता माटतुल्याः प्रकीर्तिता इति व्यासवचनात् योगीन्द्रवचने पलीयहयाच जीवत्यिटकविभागे पलीमात्रस्य पुचसमांशत्वम् । पुचपलीपदयोः पिलप्रतियेगिकासम्बन्धार्थकतया गौणमुख्यार्थकत्वानपत्तेः । पित्रोरुरुद्धं विभागे तु पुचकर्ककतया तत्सम्बन्धमाटप्रतीते-र्वैरुप्यादुभयपरत्वासम्भवात् पुचवतीनामेव स्वपुचसमांशित्वं अपुचाणान्तु यासाक्षादनमात्रभाक्तमविभक्तसंस्थपलीनामिति । युक्तच्छेतज्जीवदिभागे पितुः सातम्भगत् अजीवदिभागे पुचाणां स्वातन्त्र्यात् माटपदपलीपदत्वरसाच । युक्तस्वपुचाणां यासाक्षादनमात्रभाजनत्वमिति बङ्गतरग्निवन्धनवरसः ।

मिताक्षराक्षतस्तु जीवदिभागे पुचसमांशित्वं पलीनामुक्तमिदानीं पितुरुरुद्धं

विभजतामपि पुच्चसमभागित्वं पल्लीनामाहेत्वतारणिकं पितुरुहर्णं विभजतामित्यस्य येऽगीश्वरवच्छः प्रयच्छतोरुचापि सपुत्रापुच्चसकलापितृपल्लीनां पुच्चसमांश्चित्यमभिप्रेत-मिति प्रतीयते ।

मद्दण्डलक्ष्माताप्यत इवोक्तम् । जननीयह्यगमपुच्चाशामपि माढ्डसपल्लीनासुप-लक्ष्मां पितामहीनाश्च । असुताश्च पितुः पन्थ इत्यादिवासवच्छनादिति ।

युक्ताचैतत्पितुः परन्वयह्यति पुच्चप्रतियोगिकापितृपितृह्यगमान्वया वैयर्थ्यात् । पुच्च-समांश्चित्यस्य पितृकृतविभागविषये पन्थः कार्याः समांशिका इति वदन्नपि मातर इत्येव वदेत् । तस्मात्पितृपल्लीत्प्रयुक्तमेव जीवद्विभागसाक्षात्कां पुच्चसमांश्चभाक्षमिति मिताक्षरामदनरत्नकारकृतोरुभिप्रायाः ।

पितुरिति जर्जरि वष्टी । तेन पितृकृत्वे के विभागे पन्थः समानांशा इत्युक्ते-उर्ध्वाचत्प्रतियोगिकास्त्वैव पल्लीत्यस्य जाभाज्ञांवदिभागविषयतैवास्तेऽचिता । तत्र माढ्ड-पदे मुख्यामुख्यमाढ्डपरत्वानौचित्यात्प्रतिसम्बन्धितया च पुच्चाशामेव स्ववच्छनोपात्ता-नासुपस्थितेर्जननीयपरत्वमेव माढ्डपदस्य मुख्यार्थलाभायोचितम् । शिष्टाचारोरुपेवम् । तदत्र युक्तान्तद्याह्यमित्यलमधिकोन ।

हृहस्यतिः । तदभावे तु जननी तनया वा समांशिनी । अत्र प्रक्रमात्तच्छब्देन पिता गृह्णते ।

20. पितरि प्रेते यदि केऽपि भातरोरुसंख्यातः सन्ति तदा तत्संखारं समुदायवद्येषा विधायावश्चित्तुं यथांशेन विभजनीयमित्याह याज्ञवल्क्यः । असंख्यातास्तु संख्यार्थ्या भाद्रभिः पूर्वसंख्याते । भाद्रभिरित्यमित्यानादसंख्याता भातर इति प्रतीयते ॥

संख्यार्थ्यत्वमात्रविधानस्य दायथभागप्रस्तावासम्बन्धात्समुदायत्रयादिति विवक्ति-तम् । तथाच यासः । असंख्यातास्तु ये तत्र पैष्ठकादेव तद्वनात् । संख्यार्थ्या भाद्रभि च्यन्ते; कन्याकाश्च यथाविधि ॥

अविद्यमाने पितृधनेऽसंख्यातसंखारावश्यकतामाह नारदः । अविद्यमाने पितृर्थे सांशादुद्गुत्व वा पुनः । अवश्यकार्याः संखारा भाद्रभिः पूर्वसंख्याते ॥

21. असंख्यातभगिनीसंखारोरुप्यावश्यकः । सति पितृद्वये ताभ्योरुद्गदानमपी-त्वाह याज्ञवल्क्यः । भगिन्यस्त्रिय निजार्दशाह्वच्चांश्चन्तु तुरीयकमिति । असंख्यातः संख्यार्थ्या इत्युष्मः । मगुः । स्वेभोरुद्गदेभ्यस्तु कन्याभ्यः प्रदद्युर्भातरः एष्यत् । खात्स्व-दंशाचतुर्मांगं पतिताः स्युरदित्यवः ॥

अत्रोभयत्र प्रत्येकपरिकल्पिताभिजाद्द्वादुद्गुत्व सर्वैर्ज्ञातभिर्भगिनीभिः प्रत्येकं चतुर्थेऽश्च देय इत्यर्थो न भवति । तथा सति बज्जभाद्वकाया बज्जधनत्वं बज्जभगिनी-कास्य भातुर्मिर्झनतापत्तेः । तस्मात्संखारोरुपयुक्तद्यद्यानमात्रं विवक्तितमिति रत्नाकर-चिन्तामण्डादौ आख्यातम् । अनूडानान्तु कन्यानामित्तान् रूपेषां संखारं कुर्यादिति विश्ववच्छनस्य तत्रोपादलक्ष्मपन्थस्तम् ।

तदयुक्तम् अंशदानाविवक्तायाः स्फुतिदयेऽप्यन्यायत्वात् । संखाराकरणप्रत्यवा-

थात् पुच्छदानप्रत्यवायश्च अवगाच्च कन्यथा पतिताः स्वरदित्सव इत्यदानप्रत्यवायवधनम-  
प्रसंक्षारप्रत्यवायपरं स्थात् ।

अतो भेदातिधिभिताक्षराकारादिभि र्णात्मात्मेवम् । निजादंश्शात् स्थात् स्थादं-  
श्शादिति नापादाने पञ्चम्यपि तु ल्प्यन्नोपे । तथा च तमपेत्येति यावत् । एव स्वयम्भा-  
तीया कन्या तज्जातीयपुच्छभागचतुर्थांश्चभागिनी सा कार्या । तथा चायमर्थो ब्राह्मण-  
जातीया या कन्या वक्ष्यमाणो ब्राह्मणोपच्छभागो यावांस्तत्त्वतुर्थांश्चक्षस्याः । एवं चत्त्रि-  
यादिजातीयकन्यापि । तच यथा । यदि कस्यचिद्दुब्राह्मणेवैका पल्ली तस्याच्चैकाः पुच्छः  
कन्यकाच्चैकाः । तच पितृन्नवं सर्वमेव दिधा विभव्य तचैकम्भागचतुर्झा कृत्वैको भागो  
भगिन्यै तेन देयाऽवशिष्टं स खयङ्गुणीयत् । एवं पुच्छद्ये कन्यैकोच चेधा विभागं  
सर्वक्षयस्य विधायेकस्य चतुर्झाकृतस्य भगस्य चतुर्थभागभगिन्यै दत्त्वा शेषं  
द्वाभ्यां यथांश्चिभव्य ग्राह्मम् । पुच्छैको कन्याद्वित्ये चेधाकृतस्य चत्त्रियैकम्भागचतुर्झा  
कृत्वा द्वावश्शौ द्वाभ्यां कन्याभ्यां दत्त्वाऽवशिष्टत्वेन ग्राह्मम् । एवं समानजातीयेषु  
क्षस्येत्युपि सर्वथा भगिनीनां भावजायुचितभागचतुर्थांश्चभागिता यथा भवति तथो-  
श्शम् । यदा तु ब्राह्मणीपुच्छ एकः चत्त्रियकन्या चैकाः । तच पितृधनं सप्तधा विभव्य  
चत्त्रियापुच्छभागांस्त्रीचतुर्झा विभव्य चतुर्थमंशं चत्त्रियकन्यायै दत्त्वा शेषं ब्राह्मणी-  
पुच्छो गृह्णीयत् । यदा तु द्वौ ब्राह्मणपुच्छौ चत्त्रियकन्या चैकाः तदा पितृधनमेकाद-  
श्शधा कृत्वा चत्त्रियापुच्छभागांस्त्रीचतुर्झा विभव्यैकमंशं चत्त्रियकन्यायै दत्त्वा ब्राह्मणी-  
पुच्छवन्यत् सर्वं विभव्य गृह्णीयताम् । एवं सर्वत्र जातिवैषम्ये भावभगिनीसंक्षा-  
साम्यवैषम्यं योज्यम् ।

विष्णुरपि । मातरः पुच्छभागानुसारभागहारिण्योऽग्नूडाच्च दुष्टिरः पुच्छभागानु-  
सारेण यथा वर्णकमेवा पुच्छगाच्छतुर्थांश्चेकभागभगिता तथा तत्तज्जातीयपलीनामपि ।  
अग्नूडाच्च दुष्टिरः पुच्छभागानुसारभागहारिण्य इत्यनेन यद्यपि चतुरांश्शानां सर्वेषां  
दुष्टिभोदानं प्रतीयते तथापि खेष्योऽश्रेष्ठः स्थात् स्थादंश्शादिति मनुयोगीश्वराभागचतु-  
र्थांश्चदानस्योक्तेस्तथैव पुच्छभागानुसारेन न सज्जातीयव्यातृसमभागहारिण्यमित्वविरोधः ।

स्पृष्टमात्र उहस्त्यिः । समांशा मातरस्वेषाच्छतुर्थांश्च कन्यका इति । कन्य-  
कानामवदत्तानाम्बुर्धे भाग इत्यते । पुच्छाच्च चयेभागाः साम्यं त्वस्यधने सृत-  
मिति ॥ वदतः कात्वायनस्यायेतदेवाभिमतम् । साम्यमित्यादेस्यमर्थः । यदि संक्षा-  
रपर्वाप्तमपि पितृधनं नास्ति तदा पुच्छसमभगितैव दुष्टिदृशामिति ।

अग्नूडानां त्वित्यादिविष्णुवचनमपि भेदातिथादीनां न प्रतिकूलम् । विजानुसारेण  
संक्षारमग्नूडानामितुः कन्यानां खभगिनीनां कुर्यादित्यनेन संक्षारावश्वकतामाच्चम-  
चोचते न तु भागदानादाने ।

सृतिचत्त्रियकारपूर्णु । कन्याभ्यच्च पितृवचनदेयं वैवाहिकं वस्तिति देवकवचन-  
गुसारेण संक्षारमात्रोपयोगित्यदानमेव मन्त्रते । वैवाहिकं वस्तु देयमिति वैवाहिक-  
विशेषस्यान्यथा वैर्ण्यापत्तेऽरिति तदाश्रयः ।

चत्र वदामः । कन्याभ्यः पितृदद्यन्देयमिति एथरिवधिः । तच मन्वाद्यनुरोधाच्च-  
तुर्धंश्लृपमेव । वेवाहिकंवसु च देयमित्यपि एथगेव विधिः । विभज्यमाने दायाद्ये  
कन्याजलद्वारं वेवाहिकञ्च स्त्रीधनं लभेतेति शङ्खवचनसमानार्थतया । आख्यातच्चेदं शङ्ख-  
वचनं विद्यारथण्ठोचरण्णः पराश्चरस्मृतिटीकायाम् । पैठकदद्यविभागकाले स्वधृतालङ्घण-  
रात्मिकमपि कन्या प्राप्नोतीव्याह शङ्ख इति । यदि तु वैवाहिकं विवाहेष्ययोग्यि पिठ-  
इच्यं कन्याभ्योदेयनिवर्यः स्याद्द्वापदम्युक्तक्षम् स्यादिति एथरिवधिद्यमेवाच युक्तम् ।

दाशतवक्षता तु कन्याभ्यस्त्र पिठदद्यादैवैवाहिकं बस्तिपि पठितन्तत्रापि शङ्खेन  
समानार्थजतालाभायास्त्रदुक्तमेव आख्यानमादत्तुमहं न तु विवाहेष्ययुक्तदद्यपदतेव-  
वस्येयम् ।

चत्र च मन्वादिवचनेषु भगिनीपदं क्षचित् क्षचित्व कन्यादिपदं यद्यपि अद्यते  
तथापि भाट्कर्तृकविभागाधिकारात् पिठप्रतियोगिकं कन्यात्वन्दुष्टित्वं भाट्प्रतियो-  
गिकञ्च भगिनीलमादायैकार्थकातावसेया ।

तस्मादजीवत्पिठकविभागे भगिनीनामपि पिठदद्यांश्चभागित्वम् तु संखार्थत-  
मात्रम् । पूर्वम् यत्किञ्चित्पिता ददाति तदेव लभते विशेषवचनाभावादिति ।

जीमूतवाहनेन तृक्तम् । प्रदद्युर्भातरः दत्त्वांश्चक्षिति मनुयोगीश्वराभ्यामभिधा-  
नात् भगिनीभिरधिकारवुद्धा चतुर्थोऽश्चोग्राद्यः । न छाधिकारिण एकम् भात्रेऽच्यो  
भाता सांश्चाद्यादित्युच्यते । तथा चतुर्थांश्चदानमपीति । तददाने भाट्वामेव देष्वो न  
तु तासाम्यसङ्कारादितेति ।

तदप्ययुक्तम् । उक्तैवैचित्रमात्रस्याप्रयोजकत्वात् । इच्छ्या विभजेत्सुतान्  
उद्धारं च्यायसे दत्त्वेत्यादिवत् ।

यदपि तेनैवोक्तम् । येषाम् न ज्ञाताः पित्रा संखारविधयः ज्ञामात् । कर्त्तव्या  
भाट्भिर्षेषां पैठकादेव तद्भावादिति ॥ नारदवाक्ये येषामिति पूर्विङ्गनिर्देशात्तदनक्षर-  
मेव । चाविद्यमान इति वचनादभाटसंखारार्थमेवेदं वचनमिति सति पितृदद्ये  
मन्वादिवचनेभ्योभगिनीसंखारावश्यकत्वप्रतीतेः संखारोपयोगिक्षदानमेव विवक्षित-  
मिति ।

तद्येयम् । वचनान्तरेषु भगिनीसंखारस्यावश्यकत्वप्रतीतेः । पिता पितामहो  
भाता सकुल्यो जननी तथा । कन्यापदः पूर्वमाश्चेष्टप्रकातिस्थः परः परः । अप्रयच्छन्  
समाप्तेति भूषाहयाद्यताहताविति । भातुरपि योगीश्वरेण भगिनीविवाहसंखारा-  
करणे भूषाहयादेष्वयूतेष्वदेवामूलकतया येषाम्भेषामित्यस्य सामान्यलिङ्गान्नपुंसकमिति  
वचनात्साम्यविवक्षान्यायाच नपुंसकवश्यकत्वं विरूपैकाशेषोऽपि वाभ्युपगच्छुचित-  
एवेति ।

यद्येयस इति नुमदीर्घयोरभावम्भान्दसमभिप्रेत । असंख्याता भातरक्तु ये सुलभ  
यद्येयसः । संखार्थाः पूर्वजैसे वै पैतृकामध्यकाङ्क्षादिति । दृहस्यतिवचनं पठिला  
भातुर्गच्छन् भगिनीनामप्युपलक्ष्यमिति मदनरक्षता आख्यातम् ।

अत्र च संखारसाहचर्यादनूडानां दुष्टिलृणाम् । कन्यकानान्तदसानामित्यनूढत्विशेषणोपादानाचापरिणीताय चतुर्धाश्मभागिन्योभगिन्योऽन्याल्लु यत्किञ्चिदौचित्याक्षमन्त इति बोधम् । मातृधने चेदम्पश्चनीयम् ।

22. स्थावरस्य स्वार्जितस्य पैतामहस्य वा पुत्रानुमत्यैव पिता दानादि कुर्यात् । स्थावरं द्विषद्वैवेति प्रागुदाहृतवचनात् । यद्यपि स्थिरमर्जितमित्यनेन पैतामहे कैमुतिकन्यायेन पुत्रानुमत्यावश्यकता प्रदर्शिता । कुटुम्बस्यापिन्यामापदि तु यः कस्तिदन्यानुमतावपि कुटुम्बभरणस्यावश्यकत्वात् स्थावरदानविक्रयादवधिकारी । एकोऽपि स्थावरे कुर्यादानाधमनविक्रयम् । आपल्काके कुटुम्बार्थं धर्मार्थं च विशेषतः इति वचनात् । धर्मार्थं इत्येनावश्यकः पितृआज्ञादिरूपेर्धमोऽग्न्याते ।

यनु स्मरणम् । विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः । एको ज्ञानीशः सर्वत्र दानाधमनविक्रय इति । तत्राविभक्तानां मध्यकद्ये स्वाम्यसाम्यादनीश्वरमन्यानुमतिं विना सिद्धमपि स्थावरे विशेषतस्याददार्थमुच्चते । विभक्तानानु अवहारसौकर्यार्थम् । काणान्तरे हि विभक्ताविभक्तसंश्ये विभागभावनावश्यं साक्षादिप्रमाणेण तथा सति कार्या स्वादन्यथा साधारणव्याधानाद्यसम्भवात् । अनुमतौ तु सर्वां सदनपेक्षद्य अवहारः सिद्धति । ननु यथाक्षुतं स्थावरे विभक्तानामपि समं स्वाम्यम् । विभागस्थादृष्टार्थताप्रसङ्गात् । अतस्यान्यानुमतिमन्तरेणापि दानादिस्खूलं सिद्धवेव विभागभावनायां अवहारोऽपि । यथा स्वामज्ञातिसामन्तदायादानुमतेन वा । हिरण्योदकदानेन बहुभिर्गच्छति भेदिनीति वचने यामानुमतिः सामन्तानुमतिश्च । सामन्तानुमतिस्तु सीमाविप्रतिपत्तिनिरासायापि । ज्ञातिशयादानुमतेस्तु पूर्वद्वैव अवश्या । अतश्च स्मृत्यन्तरम् । प्रतियहः प्रकाशः स्यात् स्थावरस्य विशेषत इति । अन्यथाचापि यामसामन्तानुमतिमन्तरेण दानाद्यसिद्धिः प्रसन्नेत । हिरण्योदकदानेनेति स्थावरे विक्रये नाल्पि कुर्यादधिमनुज्ञयेति स्थावरस्य विक्रयप्रतिवेद्यात् । भूमिं यत्प्रतिगृह्णति भूमिं यज्ञं प्रयच्छति । तावुभौ पुण्यकर्माण्डौ नियतं सर्गगामिनाविति । दानप्रशंसनात् कुटुम्बभरणव्यार्थमवश्यकर्त्त्वेऽपि विक्रये सहिरण्यसुदक्षं क्रेचे दत्त्वा दानांश्चोऽपि कस्तिद्यथा तत्र भवति तथा दानरूपेण स्थावरविक्रयं कुर्यादिति सूचितम् ।

जीमूतवाहनल्लु । स्थावरस्य समस्तस्य गोचसाधारणस्य च । नैकः कुर्यात्कायन्वानं परस्यरमतं विना । विभक्ता वाऽविभक्ता वेत्यादि व्यासीयवचनदद्यसुपन्यस्य नेदनेकस्य क्रयदानाधनविकारप्रतिपादनार्थम् । यथेष्वविनियोगार्हत्वस्त्वयास्य स्वाम्यस्य प्रव्यान्तरद्वय स्थावरेऽप्यविशेषात् स्वत्वागाद्यगिष्यस्त्वेच्चनश्चतेनापि वस्तुनेऽन्यथाकरणाग्रकर्त्त्वाधयितुमशक्यत्वात् । किञ्चु दुर्दृष्टपुरवश्यति कुटुम्बार्थादिनिमित्याभावे कुटुम्बविरोधादर्थमभागिताज्ञापनार्थं निवेदहृष्यम् । अतश्च नारदः । यदेकजातावहवः पृथग्भर्माः पृथक्क्रियाः । पृथग्भर्मगुणोपेता नचेत्कार्येषु संयुताः ॥ स्वभागान् यदि दश्यते विक्रीबीयुरथापि वा । कुर्युर्येषु तत्सर्वमीशास्ते स्वधनस्य हीति ।

सामान्यत एव विक्रायाद्यनुभवते । ईश्वाले स्वधनस्य चेति हेतुभिधानात् स्थावरमिश्र-  
रमणीदं वचनम् । अपरथा तदानर्थव्यापत्तेरित्वाह ।

तत्स्वयंगेव परं त्वर्धमेभागिताश्वापनार्थमित्युक्तम् । वृथा स्थावरविक्रायस्य बङ्गम्  
प्रत्यपि निषेधादेकयह्यापार्थकवापत्तेः । अवहारशास्त्रस्य अवहारसौकर्यादिवृष्ट-  
प्रयोजनसम्बवेऽद्वचल्यनानुपत्तेः । अन्यद्यानुभवावपि तदापत्तेः कुटुम्बविरोधजन्म-  
वचनान्तरप्रतिपादितार्थमप्रयोजकतापरमत्तु ।

23. अत च पुनेच्छया यो जीवद्विभागो यस्ताजीवद्विभागः स एकेच्छयापि  
भवत्वविशेषात् । अतर्व विभागं प्रकल्प्य यत्कात्वायनेनोक्तम् । अप्राप्यवहाराणां  
धनं अयविवर्जितम् । व्यसेयुर्बन्धुमित्येषु प्रोष्ठितानां तथैव चेति ॥ तदपि सम्भवम् ।  
अन्यथा तदनुभवितमन्तरेण विभागाभावे तद्वनस्य बन्धुमित्येषु व्यासविधानमनुपत्तें  
स्थात् । तंथा विष्णुरपि । तथा इत्यं वालधनमात्थवहारप्राप्तेदिति ।

23a. अयच्छ पुचाणां विभागः पुचपौचप्रपौचपर्वन्तः समेनात्रोत्पत्तिः  
प्रत्यासंस्तिक्रमेभावाधिकारात्मकः । पुचादेनान्वयाणामेव पार्वणे पिण्डदानाधिकारात् ।  
अतर्व देवलः । पिता पितामहस्यैव तथैव प्रपितामहः । उपासते सुतं जातं शकुन्ता  
इव पिप्पलाम् । मधुमत्सैख शाकैच्छ पथसा पायसेन च । एव नोदास्यति आङ्गं वर्धासु  
च मधासु चेति ॥ तथा च स्नोकाः शङ्खलिखितगौतमानां । पिता पितामहस्यैव तथैव  
प्रपितामहः । जातम्पुचं प्रशंसन्ति पिप्पलं शकुनाइव ॥ मधुमांसेन खङ्गेन पथसा पाय-  
सेन वा । एव दास्यति नस्तुपि वर्धासु च मधासु चेति ॥ एवं तुत्याधिकारात् जन्मना  
स्वलस्यापि तुत्यत्वात्तुत्यभागभागिता प्रसक्तायनेकपिण्डकावान्विति वचनेन निवर्तते ।

जीवत्यित्कर्योः पौचप्रपौचयोः पार्वणानधिकारेण पिण्डदानत्वाभावात्प्रतितामह-  
प्रपितामहधने नाधिकारः । यदा चैकस्य पुचाः सन्देकच्छ पुच एवात्ति । तदा पुचस्यै-  
कोभागोऽप्रस्त्वैकः सर्वेषां पौचाणाम् । खपित्वधीनजन्ममूलकात्मात् पितामहधनसम्ब-  
न्धस्य यावत्वेव धने तस्य स्वामित्वार्हत्वन्तावत्वेव तेषामपीति जीमूलवाहनेनोक्तम्

अलादेयम् । जन्मना पौचाणामपि पितामहस्यैव स्वलस्यवस्थापनात् । तस्मात्  
पौचाणां पितामहधने वाचनिकमेव भागदैवत्यं न त्वैषप्रतिक्षम् ।

यत् तेजेनोक्तम् । यचैकस्य भातुरुलेकसङ्घाः पुचा अन्यस्य च ततोऽप्यसङ्घा-  
ल्लचेदमनेकपिण्डकाणामिति वचनं पौचतेन सर्वेषां समभागगिणद्वयर्थज्ञीवति तु पितरि  
पौचाणामितामहधनसाम्ये सपुचापुचभावद्वयविभागे तत्पुचाणामपि विभागः स्थात्  
स्वाम्याविशेषादिति ।

तत्प्रागेव निरस्तम् । उक्तोऽतिप्रसङ्गोऽप्यनेन यदाकाः । अतर्व पिण्डव्याह-  
पुचसमवाये पिण्डव्यपिण्डधनसम्बद्धिं व्याहपुचाणामत्र स्वाम्याभावादिभागश्च न स्था-  
दिवप्यपालत्तम् ।

यत् जीवत्यित्कर्योरित्वादि तदपि मन्दम् । न हि पिण्डदानाविकांस्तरव दाय-  
रहस्ये प्रयोजकः ज्येष्ठे चति ज्येष्ठायामगिणारेऽपि दायग्रहवात् । तदर्हंगायाचा-

चायनपायात् । गोत्रजादीनां दायहराणामनेकेवां समवाये पिण्डदानाद्युपकारित्वं धनस्वामिनो यज्ञद्युपकारित्वावर्तकम्परक्षतु तद्व प्रयोजकम् ।

24. जीवद्विभागेऽजीवद्विभागे वा कस्याद्वितीयतृपत्न्यां भातृपत्न्यां वा स्युर्गभायामाप्रक्षवव्यतीक्ष्य विभागः कार्यः । अथ आठणान्दायविभागे यास्वानपत्वाः स्थियलासामापुत्राभादिति वशिष्ठस्मरणात् । आपुत्रांभादिति वचनात् स्यद्यगर्भेसु प्रतीक्षाऽस्यद्यगर्भासु तु नेत्रवगम्यते ।

अत एव तत्र पञ्चादुत्पन्नस्य विभागप्रकारमाह योगीश्वरः । विभक्तेषु सुतोजातः सर्वर्णायां विभागभाक् । पित्रिच्छया पुच्छेच्छया वा जीवतोः पित्रोर्विभक्तेषु पञ्चात्मवर्णायां भार्यायामुत्पन्नो विभागभाक् । विभव्यत इति विभागः पित्रोर्भागस्तम्भजत इति विभागभाम्भवति । पित्रोरुद्धर्जं स एव तयोरांशं लभत इत्यर्थः । अस्त्वां दुष्टिरिति मातृभागमिति विशेषः । सर्वर्णायामिति विशेषणादसर्वर्णायां जातस्तु पित्राङ्गनात्मांशमेव लभते दुष्टिरिति मातृभागं सर्वमेव । अनेनैव न्यायेन जीवद्विभागेऽपि विभक्ताज्ञेऽसर्वर्णापुच्छः स्खजात्युचितभागेव । न सकलपित्र्यभागित्वमवस्थेयम् ।

एतदेवाभिप्रेत्य मनुः । जाङ्कं विभागात्मातस्तु पित्रमेव इरेङ्गमिति । पित्रोर्दिन्पित्र्यन्वयनं यथोक्तववश्याय इरेत् । एवकारेण आठभिः स्वांश्चादाक्षय स्खभागस्मभागभाक् स न कार्यः । गौतमोऽपि । विभक्तजः पित्रमेवेति ।

जोवति तु पितरि मातरि तत्सप्त्याज्ञाऽविस्तृत्यगर्भायां विभक्तौर्विभागात्मारोत्पन्नोऽयं स्खभागादाक्षयस्खभागस्मभागभाक् स कार्यः । तथा च विष्णुः । पित्रविभक्ता विभागानन्तरोत्पन्नाय विभागन्दशुरिति । तत्र आठदत्तं तद्विभागं पितैव गृहीत्वा तम्प्रसिपालयेत् । तस्मैव तत्राधिकारात् । अप्राप्यवहाराणामित्यादिप्रागुक्तवचनात् ।

यत्र वचनम् । अनीशः पूर्वजः पित्रोर्भातुर्भागे विभक्तज इति । तस्यायमेव विषयः । पूर्वजो विभागात्पूर्वमुत्पन्नः प्राप्तपित्रधनविभागः पित्रोर्विभागेऽनीशो न स्वामी । विभक्तजस्य पूर्वविभक्तस्य भातुर्भागेऽनीश इत्यर्थः ।

विभागोत्तरस्य यत्पित्र्यन्तं तदपि विभक्तजस्येव । पुच्छैः सह विभक्तेन पित्रा यत्क्षयमर्जितम् । विभक्तजस्य तत्पूर्वमनीशात्मांच पूर्वजाः यथा धने तर्थर्वं च दानाधानक्षयेषु च । परस्परमनीशात्मे मुक्ता इत्यौचोदकक्रियामिति हृषस्तिक्षरणात् । स एव पित्रा सह विभक्ता ये सापला वा सहोदराः । अधन्यजांलु ये तेवामित्रभागहरालु ते । अत्र हेतुर्नीशः पूर्वजः इत्यादितद्वचनोक्तायत् ।

ये तु विभक्ताः पित्रा संहृष्टाः पुचालीः सह तु तस्य विभागो न सकलपित्र्यधनयहवमित्याह मनुः । संहृष्टालेगे वा ये स्युर्विभक्तेत सतैः सह । तेन पित्रा ।

पितुरुद्धर्जन्मित्यद्वने आठभिर्विभव्य गृहीते विभागस्मयेऽस्यद्यगर्भायाः पित्रपत्न्याः पञ्चातुचे जाते स्खभागादायविश्वोधितात् तेः स्खभागस्मभागभाक् कर्त्तवीय इत्यात् यात्तद्वचनाः । हृषाक्षा तद्विभागः स्खादायविश्वोधितात् । हृषाक्षाद्विभिर्विभीतात् । चावः प्रतिमार्दं प्रतिदिनं प्रत्यर्द्द वसदुपरिद्वन् । अवः पित्रास-

र्णायाकरणं भावभगिनीसंखारकरवच्च । तस्य सर्वक्षाधारणेन कर्त्तव्यतात् । न तु भावकर्त्तव्यव्यक्तस्यैतत्सम्बन्धभावात् । ताभ्यामायव्याभ्यां विशेषितात्प्रिव्यवधनात्स्य विभागोन्नरोत्प्रस्य विभागः पूर्वविभक्तसमः स्यादित्वर्थः । एतदुक्तम्भवति । प्रातिख्यकेषु खसभागेषु तदुत्पमायमवैश्यावैश्यकर्त्तव्य साधारणं व्यञ्जिकावैश्याविश्वस्खलभागेभ्यः किञ्चित्किञ्चिदुद्भव्य विभक्ताः खसभागसमभाकृ कार्यं इति । वाश्वद्वलु विभक्तेषु सुतोजात इति पूर्वार्जेन सह व्यवस्थितविकल्पार्थः व्यवस्था चोक्तैव ।

हलायुधलु । दृश्यात् प्रव्यक्तात् तु गुप्तात्प्रिव्यवधनादित्वर्थमुक्ता । विभक्तभावपेक्षया येऽप्यगुणो विभक्तजल्लिप्ययेऽप्यम्भ्य इत्याह ।

तन्निर्वर्जितात् गुप्तस्यापि विभागानन्तरे ज्ञातस्य समभागेन विभजनीयत्वादच तदप्रवृत्तौ प्रमाणभावान्नियमकल्पनेऽदृष्ट्वार्थतापत्तेविज्ञानेन्द्रीकार्यकर्त्तव्याच वचनसामञ्चस्यादुपेक्ष्यम् ।

25. असवर्णानां भावूलां विभागप्रकारमाह योगीश्वरः । अतुस्त्रिहेकभागः स्तुर्वर्णश्चो ब्राह्मणात्मजाः । ज्ञात्वास्त्रिहेकभागा विद्यात्तु हेकभागिन इति ।

तिष्ठो वर्णानुपूर्वेष दे तथैका यथाक्रमम् । ब्राह्मणक्षत्रियविश्वाभार्या स्वाशूदजन्मन इति । योगीश्वरेण ब्राह्मणस्यासर्ववर्णास्त्रिः ज्ञात्रियस्य दे विश एका भार्या इति सवर्णामादाय तेषां मध्ये ब्राह्मणस्य चतुर्थः ज्ञात्रियस्य तिष्ठो वैश्यस्य दे इत्युक्तम् । सवर्णासवर्णसर्वभार्याभिप्रायेष व्यादिसंखाने वैश्यस्यापि दे शूद्रापरिहारे च खेवेति स्वा शूद्रजन्मन इति वैश्यादेवज्ञात्यासङ्गतेरेवासवर्णाभिप्रायेवेयं संखेति विज्ञानयोगिभिर्यात्यात्म ।

तथा च ब्राह्मणाद् ब्राह्मणादिषु स्त्रीषु जाताः पुच्छा यथाक्रमं वर्णश्चो माहवर्णानुसारेण । संख्यैकवचनात्त्वस्वीप्यायाभित्यधिकरणाकारे इत्सु प्रत्ययः वर्णे वर्ण इत्वर्थः । ब्राह्मणादिष्ठः ज्ञात्रियादिषु जातानां मूर्ढाभिविक्तादिजातिसंज्ञत्वेन तद्वर्णशूद्रेन ग्रहणासम्भवान्मात्रवर्णश्च इत्वर्थः । अतुस्त्रिहेकभागः स्यः । एतदुक्तम्भवति ब्राह्मणेन ब्राह्मणामुत्पद्मा एकैवश्वत्तुरज्ञातुरभागान् लभन्ते । तेनैव ज्ञात्रियायामुत्पद्मास्त्रींस्त्रीन् । तेनैव वैश्यायामुत्पद्मां दौ दौ । तेनैव शूद्रायामुत्पद्मा एकमेकमिति । वर्णश्च इति सर्वत्रोन्नरेत्र सम्बन्धते । तथा च ज्ञातात् ज्ञात्रियादिषु जाता यथाक्रमन्तीत्वीन् दौ दावेकैकस्तु लभन्ते । विद्वैश्यादिषु जाता यथाक्रमं दौ दावेकमेकं लभन्ते इति । शूद्रस्यासवर्णभार्याभावात्यापुच्छभागः पूर्वोक्त एव ।

यद्यपि शूद्रापरिक्षयने दिजातेभूर्याशेषः पुच्छार्थविवाहलु सर्वथा शूद्रायां निषिद्ध एव । तथा च मनुविष्णु । दीनजातिं स्त्रियं भोद्धादुद्दिष्टो दिजातयः । कुणान्तेव नयन्यामु सततानानि शूद्रताम् । शूद्रावेदी प्रत्यवैरेतत्तन्यस्य च । शौनकस्य सुतोत्पत्त्या तदपव्यतया भट्टोः । तदपव्यतया शूद्रामात्रजनितापव्यतया ब्राह्मणस्य तु ज्ञात्रियपेक्षयाप्यधिकरणादेवतामाहतुलत्परिवर्त्ये तावेव । शूद्रां श्वयन्मारीप्य ब्राह्मणो यावधोगतिम् । अनयिता सुतनास्यां ब्राह्मणादेव शीथत इति ।

योगीश्वरोऽपि । यदुच्चते दिजातीनां शूद्रादरोपसंयमः । नैतमम मतं यस्मात्-  
चात्मा आयते स्वयमिति ॥ तेज विप्रादिजातशूद्रापुचाभावात्मकस्यांश्चाभिधानमिति  
प्रतिभाति ।

तथापि रतिर्धर्मार्थविवाहयोरनुकूल्यवेन परिवीतायां शूद्रायामनुवक्षात्मातस्य  
विभागाभिधानमुपद्धमेव । शूद्रग्राङ्मातो निवादो यः पाठश्चवेति आतिकथनमिति ।  
आचारमिताच्छराधामेवं अवस्थापितं । अतएव मनुना । कामतलु प्रवृत्तानामिमाः  
स्युः क्रमश्चोवरा इति । कामत इत्यवरा इति च वदता सर्वर्णापरिक्षयनमेव मुख्यमि-  
त्युक्तम् । शृङ्खलिखिताभ्यामपि । भर्याः कार्याः सजातीयाः सर्वेषां अर्थस्याः स्युरिति  
पूर्वः जस्यतेऽनुकूल्यस्वतत्त्वो ब्राह्मणस्यानुपूर्वेष्या तिष्ठोराजन्यस्य दे वैश्यस्य एका  
शूद्रस्येति । आनुपूर्वेष्योऽनुकूल्यवेदतरोपरक्षमध्यता स्फुचिता ।

यतु मनुना चातुर्वर्णपुचविभागे प्रकाशद्वयमुक्तम् । अंशन्दायाङ्गदेविपो दावंशौ  
क्षत्रियासुतः । वैश्याजोऽर्थर्दमेकांशमंशं शूद्रासुतो हरेत् । सब्दं वा रिक्षयातनु  
दशधा परिकूल्य तत् । धर्मं विभागं कुर्वीत विधिनानेन धर्मवित् । अतुरोऽशान्  
हरेदिप्रस्तीनशान् क्षत्रियासुतः । वैश्यापुचो हरेद्वांशमंशं शूद्रासुतो हरेदिति ॥  
तत्रोत्तरप्रकारो योगीश्वरसंवादी । तद्वाल्लवदगुणवत्क्षत्रियादिपुचविषयतयां अव-  
स्थापनीयम् । अतएव ब्राह्मणातोराजन्यापुचर्षव यदि अमव्येष्टो गुणवांशं तदा  
ब्राह्मणोपुचसमांशभावक् ब्राह्मणेण क्षत्रियेण च वैश्यायाङ्गितत्त्वाद्वान् क्षत्रिया-  
पुचसमांशभागित्याह दृष्टस्यतिः । विप्रेण क्षत्रियाजाते अमव्येष्टो गुणवान्वितः ।  
भवेत् समांशो विप्रेण वैश्याजातस्यात्मैवत्त्वं । तथा दौधायनः । सर्वर्णापुचानन्दापुच-  
योरनन्दापुचस्येद्वावान् स व्येष्टांशं हरेत् । गुणवान् इति श्रेष्ठायामभावां भवतीति ।  
एतद्वचनेऽनन्तरोत्प्रभावात्मस्य गुणवत्क्षयेष्टताप्रयुक्तोत्त्वापुचसमांशभावोऽप्तोः वैश्यण-  
शूद्रापुचस्यायेवंविधस्य वैश्यापुचसमांशिता इत्युवा दृष्टस्यवनुक्तापि । व्येष्टांशं हरे-  
दिवस्योत्त्वांशहरणमेवार्थो दृष्टस्यतिसंवादादुत्तमजातीयापेक्षयाभिकांशानौ-  
चित्वाच ।

यदा तु शूद्रा एवैकः पुचो ब्राह्मणस्य । तदा स तद्वन्द्वतीयांशहारी मागद्यं  
सपिष्ठानां तदभावे सकुल्यानान्तेषामप्यभावे आङ्गकर्तुः । यदाह देवलः । निषाद-  
श्वपुचलु विप्रस्य स द्वतीयमाव् । इौ सपिष्ठः सकुल्यो वा सधादातायवा हरेत् ।  
ब्राह्मणाच्छक्षयां जातो निषादः स एकस्वातौ पुचस्वैर्थ्यः ।

क्षत्रियवैश्ययोरु शूद्रएवैकः पुचः स धनार्जहरेऽपरमर्जमपुचधनयहकाभिका-  
रिक्षलहक्षमेष्ट ग्रहीयुः । तथा च विष्णुः । दिजातीनां शूद्रस्वेषापुचोऽर्जहरेऽपुच-  
कर्त्तव्य या गतिः साऽर्जस्य दितीयस्येति । दिजातिपदेनाच्च क्षत्रियवैश्यमात्रयहवम् ।  
देवलेन ब्राह्मणे विश्रेष्ठाभिधानात् । एकपुच इति कर्मवारयः ।

इदमपि सदृतातिगुणवत्क्षूद्रापुचविषयम् । अन्यथा । यद्यपि स्वातु सत्युच  
इत्यादिना ब्राह्मणक्षत्रियविष्णाभिधानादिना च वक्षमावमनुवचनेन विरोधापत्ते ।

यद्यपि सामान्यत इयम्भागकृमित्यका तथापि प्रतियहप्राप्तभूमिव्यतिरिक्त-विद्या क्षत्रियादिसुतानानन्द भागप्रतिषेधात् । तथा च वृहस्पतिः । न प्रतियह-भूर्देया क्षत्रियादिसुताय वै । यद्यत्रेषां पिता दद्यान्तुते विप्रासुतोऽहरेत् । अत्र प्रतियहेपादानात्मायादिप्राप्तायाम्बवचेव तेषामपि भागः स्त्रावर्ह इति सूचितम् । अतएव भूमिमात्रविषये शूद्रापुच्चस्य एथद्वन्द्वेषो देवतेनोक्तः । शूद्राणां दिजातिभि जातो न भूमेभागमर्हति । सजातो वाप्नुयात्सर्वमिति धर्मो अवस्थित इति ।

यत् । ब्राह्मणक्षत्रियविश्वां शूद्रापुच्चो न रिक्षभाक् । यदेवास्य पिता दद्यान्त-देवास्य धनं सूतमिति मनुवचनम् । तत्पित्रीतिदत्तधनसद्वाविषयमिति दात्ति-गात्याः । निर्गुणापरिकीतशूद्रापुच्चविषयमिति तु पौरस्त्वास्तन्मन्दम् । यदेवास्येतादि-वाक्याद्वेषोपात्तवस्थामपह्यायानुपात्तसंगुणनिर्गुणवस्थायाः कल्पयितुमन्हर्त्वात् । अपरिकीतशूद्रापुच्चभागस्य च दासप्रस्तावेऽभिधास्यमानत्वाचेव अवस्था सुखा ।

## PART II.

1. सुखामुख्यपुच्चाणां विभागवस्थां वर्तु तत्त्वरूपं निरूपयते । तत्र याज्ञ-दक्षकाः । बीरसो धर्मपतीजस्तात्मः पुच्चिकासुतः । क्षेत्रज्ञः क्षेत्रजातस्तु सगोऽचेतरेण वा । गृहे प्रच्छद्ग उत्पन्नो गृद्धजस्तु सुतः स्मृतः । कानीनः कन्यकाजातो मातामहसुतो स्मृतः । अदातायां क्षतायां वा जातः पौर्नर्मवः सुतः । दद्यान्माता पिता वा यं स पुच्चो इत्यकः स्मृतः । क्रीतस्य तात्यां विक्रीतः क्षत्रियः स्थात् स्वयं क्षतः । दत्तात्रा तु स्वयन्दत्तो गर्भे विङ्गः सहोष्ठाः । उत्सृष्टो गृह्णते यलु खेऽपिविङ्गेभवेत् सुतः ॥

2. सवर्णा धर्मविवाहेणा धर्मपती तस्मां जातः बीरसः पुच्च इति भिता-स्वरा । वस्तुतस्तु नेदमेव बोक्षव्याम् । अनुकोमजानाम्बूर्जभिविक्तादीनामौरसेष्वन्न-र्मवादिति स्ववचनविरोधात् । न हि ते सवर्णायामुत्यवा । ब्राह्मणादिवु येषां ये न धर्मविवाहास्तद्वृत्यवानामनौरसत्प्रसंगे तेषु सत्त्वप्यन्वेषान्दायथरहयप्रसङ्गात् । तस्मादुल्लर्वाभिप्रायं सवर्णायहर्यं धर्मपतीजत्वमात्रं वाक्योपात्तं क्षेत्रजादिव्यांवर्तकं क्षत्रियम् ।

अतएव मनुः । संख्यृतायां स्वभाव्यायां स्वयमुत्पादयेत् यम् । बीरसन्नं विजानीयत्युच्चं प्रथमक्षविषयकम् । विशिष्टोऽपि । दादृशैव पुच्चः पुरावद्वक्षः स्वयमुत्पादितः । विष्वुरपि । अथ दादृश पुच्च भवन्ति स्वक्षेचे संख्यृतायामुत्पादितः स्वयमारसः प्रथम इति । अत्र वस्तवनद्वैऽपि स्वक्षेचे संख्यृतायाभिति आत्मानव्याख्येयमावेद्यन्वया पौर्नवक्षयापत्तेः । देवताः । संख्यृतायां स्वभाव्यायां स्वयमुत्पादितो हि यः । बीरसो नाम पुच्चः स प्रधानः पितॄवंशद्वक्षः । आपत्तामः । सवर्णां आत्मविहितां यथर्तु गच्छतः पुच्चक्षेषां धर्ममित्यन्दमः दायेनाव्यतिक्षमचो-भवेत्मूलायपित्रोः । बीधायनः । सवर्णायां संख्यृतायां स्वयमुत्पादितमौरत्वं पुच्च-

विद्यात् । अथाप्युदाहरन्ति । अङ्गादङ्गात्सम्भवसि हृदयादभिजायसे । आत्मा वै पुच्छनामासि स जीव शरदः शतम् । आधत्त पितरो गर्भे कुमारं पुष्करखण्डम् । यथेह पुरुषाखात्मा तथा त्वमिह जायसे । आत्मा पुच्र इति प्रोत्तः पितुर्मातुरुन्-यज्ञात् । पुद्माखस्त्रायसे यस्मात्पुच्छेनासि संचित इति ।

आपस्तुव्योबाधायनीयोः सर्वर्णाग्रहणमुल्लर्णभिप्रायकमेव । अतश्वासव-र्णासूत्यग्रानामप्यौरसपुच्छल्लावश्व विभागप्रकार उक्षः सञ्चाच्छते । आपस्तुव्यवचने सर्वर्णामपूर्वामिति रत्नाकरे घृतः पाठोऽपूर्वो न पूर्वः परिर्थस्याः सा वाग्दक्षापि या न भवतोवर्य इति प्रकाशकारइति व्याख्यातस्य । पारिजातेऽप्युक्तम् । सर्वर्णात्र द्विजस्य दिजा शूद्रस्य शूद्रा ।

न तु ब्राह्मणस्य ब्राह्मणी चक्रियस्य चक्रिया वैश्वस्य वैश्वा । अन्यथा ब्राह्म-गादिपरिणीतक्षत्रियादिपुच्छाणां द्वादशपुच्छान्तर्भवो न स्यादिति ।

3. पुत्रिकायाः सुतः पुत्रिकासुतः स तत्समः । यथाह श्लोकं वशिष्ठः । अन्वाटकां प्रदायामि तुभ्यङ्गन्यामशङ्कृताम् । अस्यां यो जायते पुत्रः स मे पुत्रो भवेदिति । मनुरपि । अपुच्छेनेन विधिना सुतां कुर्वीति पुत्रिकाम् । यदपत्वं भवेद-स्यान्तर्मम स्यात् खधाकरम् । अनेन तु विधानेन पुरा चक्रोऽथ पुत्रिकाम् । विश्वार्थं स्ववंशस्य स्वयं दक्षः प्रजापतिः । ददौ स दश धर्माय काश्यपाय चयोदश । सेमाय राज्ञे सत्कार्य प्रीतात्मा सप्तविंशतिम् ॥ अत्र परिभाष्य दत्तायामुत्पन्नः पुत्रिकापुच्छो मातामहस्येव्युक्तम् । अपरिभाषितदत्तायामपि सम्भवतीति भावमतीमिति विश्वेषण-म्युत्रिकाकरणशङ्कानिवृत्यर्थम् । अनेन चापरिभाषितापि पुत्रिका भवतीत्याचारमि-ताक्षरायां निरूपितम् । अतश्व गौतमोऽपि । पितोत्सुजेत्पुत्रिकामनपद्यो मदधर्मप-ल्यमिति सम्बाद्य । अभिसन्धिमात्रात्पुत्रिकेवेकेवामिति ॥ ब्रह्मपुरुषोऽपि । अपुच्छेण तु या कन्या मनसा पुच्छत्वत् । राजाभिवान्यवेभ्यस्य समक्षं वाथ कुच्छित् । प्राग्भर्मध्यवा शुल्कयुक्ता पित्रा वराय वा । मृते पितरि वा दत्ता सा विज्ञेया तु पुत्रिका । पित्राद्विद्यात्समभागं लभेत तादृशी सुतेति ॥ मनुः । मातुः प्रथमतः पिण्डं निर्वपेत्पुत्रिकासुतः । द्वितीयन्तु पितुर्स्यालूटीयन्तु पितुः पितुरिति ॥

अथवा पुत्रिका चासौ सुतस्य पुत्रिकासुत इति पुत्रिकैव पुच्छस्यानीयेवर्यः । तस्याच्चौरसो जातत्वेऽपि कन्यात्वात्पुच्छसमत्वमिति वयम् । पित्रवयवानामल्पत्वान्मात्रव-यवानां बाड्ज्याच्चौरससमत्वमिति मिताक्षरा । यथाह वशिष्ठः । द्वितीयः पुच्रः पुत्र-कैवेति ।

4. ह्यामुव्यायगत्तु । अपुच्छेण परक्षेवे नियोगेत्यादितः सुतः । उभयोरप्यसौ रिक्षी पिण्डदाता च धर्मत इति याज्ञवल्क्योऽपि । स वीजिनो यद्यप्यौरसस्त्रयाण्व-क्षेच्छोत्प्रवृत्तादौरसादपक्षुष्टश्व । अतश्वौरसो धर्मपत्रीज इवौरसस्त्रयाणं तेनैवाभि-हितम् । अस्माभिरपि चेत्जत्वानपायात्पेत्रजपुच्छमध्यश्व व्याख्यास्यते ।

मनुरपि । ज्ञियाभ्युपगमात् द्वेवं वीजार्थं यस्तदीयते । तस्येह भागिनौ दृष्टौ

वीजी क्षेचिकरव च । यथा लोके क्रियाकर्वणास्थातादभ्युपगमात् । एकस्य वापार्थं वीजं ब्रीह्मादि नास्ति क्षेचमस्ति अपरस्य क्षेचं नास्ति वीजमस्ति । तत्र तौ मदीयं वीजन्वदीयं क्षेचं तत्र तदावापेन क्षविं कुर्वन्त्वोत्पत्तं फलमावयोरस्त्विभ्युपगमं सम्बिदं यदि कुरुतस्तथा सति हावपि तत् फलमावगिनौ दृष्टौ । तथा ह्यामुव्यायग-स्थलेऽयत्प्रमावयोरस्त्विति संविदा यदेकस्य क्षेचेऽपरः स्वीजमावपति तदुत्प्रम-प्यपत्तमुभयोर्भवतीति तस्य क्षेचजस्य द्विपिण्डकर्वेन ह्यामुव्यायगसंज्ञा ।

अत्र याज्ञवर्खयेन नियोगोत्पादित इत्युक्तेगुं शनियुक्तस्यैव देवरसपिण्डादेव्याचा-दिभार्थ्यायां दृष्टाभ्यङ्कादिविधितः पुचोत्पादनमितरथा प्रत्यवाय उभयोरित्युक्तं भवति । तथा च मनुः । अपुचाकुर्वन्त्वातो देवरः पुचकाम्यथा । सपिण्डो वा सगोचो वा दृष्टाभ्यक्तं अस्तावियात् । अनेन विधिना जातः क्षेचजोऽस्य भवेत्सुतः ॥

यदा त्वनभिन्वाय द्वयोरपव्यं परक्षेचे देवरादिना वीजमुप्यते तदा क्षेचिण्डादव तदपव्यम् । तदप्याह मनुः । फलन्वनभिसन्वाय वीजिनां क्षेचिण्डान्तथा । प्रत्यक्षं क्षेचिण्डामर्थो वीजाद्योनिर्बलोयसीति ॥ फलमपव्यरूपमनभिसन्वाय यत्र परक्षेचे यदपव्यमुत्पाद्यते तत्क्षेचखामिनरव भवति । यथा लोके परक्षेचे ब्रीह्मादिवीजं क्षेचखामिना सह सम्बिदमण्डलैव पश्चादौ परक्षीयेऽन्यदीयो नगाम्बादिवीर्थमावपति तत्रोभयचापि क्षेचखामिनरव तदुत्पत्ते फले खान्यं दृश्यत इति प्रत्यक्षमित्यस्यार्थः । तत्र हेतुर्बाजाद्योनिर्बलीयसीति । गवाम्बादौ तथा दर्शनादिति भावः । तथा चाभिसन्वौ सवेव क्षेचजस्य वीजखामेन ह्यामुव्यायगात्मं क्षेचखामिखाम्बनु क्षेचज उभयचापीति फलितोर्द्युर्थः । अतएव यद्यपि याज्ञवर्खयेनापुचेषोत्पादिविधने वीजयभि-सन्विनेपातस्तथापि मन्वादेकमूलकतयानुसन्धेयः । अतएव । क्षेचजः क्षेचजातस्तु सगोचेषोत्तरेण वा । इत्यनभिसन्विसाधारणं क्षेचजलक्ष्मामुक्तामन्यथा पौनशत्यापत्तेः । सगोचेष देवरसपिण्डादिना । इतरेणासगोचेषोत्तरेणुक्तस्यः । मनुना सपिण्डो वा सगोचो वा इत्यभिधानात् ।

नियोगात्मक वाग्दत्ताविषय इवेत्याचार्थाः । यस्या वियेत कल्याणा वाचा सव्ये छते पतिः । तामनेन विधानेन विज्ञो विन्देत देवर इति मनुना तत्रैव नियोगविधिना पुचोत्पादनस्य नियमितत्वात् । विधवानियोगस्य प्रत्युत प्रतिषिद्धत्वात् । तथाहि । देवरादा सपिण्डादा क्षिया सम्बद्धनियुक्तया । प्रजेष्ठिताधिगत्याचा सन्तानस्य परिष्काये । विधवायां नियुक्तस्तु दृष्टाक्षो वाग्यतो गिरिः । एकमुत्पादयेत् पुचं न दितीयं वायस्यनेति । इत्यादिविधवानियोगमुपन्वस्य निषेधयति खयमेव मनुः । नान्यस्मिन् विधवा नारी नियोक्ताया दिजातिभिः । अन्यस्मिन् हि नियुक्ताना धर्मे इन्द्रः सनात-नम् । नोदाहिकेषु मन्मेषु नियोगः कीर्त्तेषु क्षवित् । न विवाहविधावुक्तं विधवावेदनं पुनः । अत इजैर्हि विद्विः पशुधर्मो विगर्हितः । मनुष्यावामपि प्रोक्षो वैश्वौ दात्यं प्रश्नासति । स महीमखिणाम्बुद्धान् राजर्विप्रवरः पुरा । वर्णानां सङ्करस्त्वे कामेष्य-इत्तचेतनः । ततः प्रभृति यो भोक्त्वा यमीतपतिकां स्त्रियम् । नियोजयत्यपलार्थनं विगर्हन्ति साधव इति ॥

अत्र वाग्दत्ताश्वदेन तुभमहं सम्बद्ध इत्यादि सङ्कल्पवाक्येन कन्तादाचा दत्ता एष्टाते । विधवाश्वदेन तु सप्तपदोपर्यन्तविवाहिणा पश्चान्मृतपतिका । न तु विवाहात्मागनियतकालप्रतिश्ववत्प्रवाग्दत्तसायाः । अव्यज्ञेऽपतितेऽक्षीये दशदेषविवर्जिते । इमां कन्यां प्रदास्यामि देवाभिगुरुसम्बिधाविति वाक्येन प्रतिश्वायते । अतएव पतिरिति मनुनोहस्तम् । प्रागभाविप्रतिश्ववत्प्रवाग्वविहित्वावेन प्रतिश्वायस्य पतित्वानुत्पत्तेः प्रतिश्वदेन निर्देशानुपपत्तेः । यद्यपि सङ्कल्पितताया अपि न स पतिर्ज्ञातः । भार्यात्मवत्पतित्वस्याप्यलौकिकसंस्कारात्मकात्मेन विवाहभीवनाभाव्यस्य सततं प्रागनुत्पत्तेः । तथापि प्रयोगोपक्षमे तत्पक्षीभूततद्यवहारसम्भवः । यजमानेष्टिः प्रागप्याहवनीयव्यवहारवत् । प्रतिश्ववत्प्रवाहमाचे तु न तदुपक्रमेऽपतिः सर्वथा पतित्वव्यपदेशोऽनुपपत्तः । अतएव प्रतीच्योदीच्यादीनां विवाहाददवीयःप्राक्काले वाग्दत्तायाहस्तदुहेष्ये मृतेऽपि पुनरविगीतशिष्टैरन्येन सह विवाहः क्रियते । अन्यथा कालौ नियोगविधेयपि निषिद्धतया पुनरक्षताविवाहस्य दूरापालतया स दुराचाराश्वव स्थात् । तथा चायमर्थः । वाचा सर्वे कृते सङ्कल्पवाक्येन दाने कृते सति यस्याः पतिः पतित्वभाव्यकविवाहभावनाविषयीभूतः पुरुषो चियेतेति । न च विहितप्रतिषिद्धत्वादिकल्पश्वव विधवानियोगस्यास्ति वाच्यम् । वस्तुनि विकल्प्यासम्भवात् । नहि विधवायां नियोगात्यवस्थस्य प्रव्यवये भवति न भवति वेति सम्भवति । नियोगविधेयस्या चियेतेवादिवचनेन वाग्दत्ताविषयत्वे नियन्ति विधवाविषये प्रवक्ष्यभावात् नियोजयित्युक्तान्दाश्रवणात् खोधर्मेषु अभिचारस्य बड्डोदेषजनकत्वश्ववत्प्रवाहात् संयमस्यातिप्रशंसनात् तुल्यवलात्यस्यापि विधिप्रतिषेधयोरभावात् । तथा च मनुरेव । कामन्तु क्षपयेद्देहं पुष्पमूलफलैः शुभैः । न तु नामापि एष्टीयात्पत्त्वयौ प्रेते परस्य लिति जीवनार्थं पुरुषान्तराश्रयते नियिद्धे । आसीतामरश्वात् क्वान्ता नियता ब्रह्मचारिणी । यो धर्म एकपलीनां काङ्क्षन्ती तमनुच्छम् । अनेकानि सहस्राणि कुमारब्रह्मचारिणाम् । दिवं गतानि विप्राचामक्षत्वा कुलसन्ततिम् । मृते भर्त्तरि साध्वी स्त्री ब्रह्मचर्ये अवस्थिता । खर्माङ्गुष्ठत्वपुच्चापि यथा ते ब्रह्मचारिणीः । अपव्यलोभाद्या तु स्त्री भर्त्तारमतिवर्तते । सेह निन्दामवाप्नोति पतिलोकात् हीयत इति पुत्रार्थमपि पुरुषान्तराश्रयवान् निन्दाविश्वयपुरःसर्वात्मविषद्वान् । पश्चात् स्वयमेव यस्या चियेतेवनेन वाग्दत्ताविषयनियोगस्य च धर्यत्वमुक्तवान् । अनेन विधानेनेव्युक्ताऽन्यथा । यथा विश्वधिगम्येनां शुक्रवस्त्रां शुचिप्रताम् । भियो भज्जेताप्रसवात्सङ्कटाद्वताविति विधानमपि दर्शितवान् । धृताभ्युगुरुवनुज्ञादिः पूर्वोक्तः सूक्ष्मनरोक्तस्य यो विश्वः सेऽप्यनेति सर्वनामा परामृशते । देवरथश्वां सपिङ्गादेष्वपलक्ष्यते । वचनान्तरागुसारात् । पतिपदं वाचा सर्व इति च व्याख्यातमेव ।

यस्मै वाग्दत्ता स प्रतियहमन्तरेष्यै तस्याः पतिरित्यक्षादेवावागम्यत इति मिताच्चराग्रन्थोऽप्यस्तदुक्तार्थाभिप्रायकतयैव नेयः । यथा श्रुते दोषस्योक्तत्वात् । अत-

एवायेतनोग्रहः । अथव विवाहो यज्ञहृताभ्यङ्गादिगियमवाहियुक्तागमगाङ्गमेवेति  
न देवरस्य तथाम्भार्यात्मपादयति । अतस्कुदुत्यग्नमयर्थं क्षेचक्षामिन एवासत्ता  
सम्बिदि । सम्बिदि सम्बिदैव दुभयोरपीति ।

नारदः । क्षेचिकानुमते वीजं यस्य क्षेचे प्रसिद्धते । तदपत्वं इयोरेव वीजिक्षे-  
चिकयोर्मतम् । ग्रह्यजिल्लितौ । मन्त्रसंखारकार्त्तुरपत्वमित्याङ्गिरसेवीजिक्षेचिक-  
योरनुमते यदीजम्बकीर्यते ततद्विधा इस्यमित्युद्घानः ॥ कात्यायनः । क्षेचिकस्य मते-  
नापि पाणमुत्पादयेत् यः । तस्येह भागिनौ तौ तु न पाणं हि विनैकतः ॥

हारीतः । जीवति क्षेचिकमाङ्गरसातन्त्रग्राम्भुते द्यामुष्यायगमनुप्रवीजत्वात् ।  
नावीजं क्षेचं प्रकृति । नाक्षेचं वीजं रोहत्युभयदर्शनादुभयोरपत्वमित्यपरे । तेषांमुत्पा-  
दयितुः प्रथमः प्रवरो भवति । द्वौ पिण्डौ निर्वापे द्वयुरेकपिण्डे वा द्वावनुकीर्त्येत् ।  
द्वितीये पुच्छलूटीये पौचो लेपिनस्य श्रीन्द्राचक्राण आसप्रमादिव्येतो ॥

जीवति क्षेचपतौ तस्यैव क्षेचं पुच्छमाङ्गः । अत्र हेतुरसातक्ष्यात् लिया  
इत्यर्थः । मृते तु क्षेचपतौ । अपुचाशयनं भर्तुरित्यादिवक्ष्यमात्मनुवचनादसा-  
तन्त्र्युमविशिष्टं यद्यपि तथापि न क्षेचिकाएव तत्र हेतुरनुप्रवीजत्वात् क्षेचिको  
वीजिनम्भयनुमत्यवशेषभावादिव्यर्थः । तचोपपादकता वीजमित्यादि निर्वापे निरुप्यते-  
उस्मिन्द्विति निर्वापः पिण्डपितृयज्ञलत्र द्यामुष्यायगाः पितृद्वयाय द्वौ पिण्डौ एष्ठग्दद्युः ।  
एकपिण्डे वा द्वौ पितरावनुकीर्त्येत् । एकैकस्मिन् द्वौ द्वाविति वीप्ता बोधा । यदि  
द्विपितासादेकस्मिन् पिण्डे द्वौ द्वावुपलक्ष्येदित्यापत्त्वमस्तरणात् । चयाग्नामपि  
द्वित्यादिति भावः । द्वितीय इत्यादि । द्वितीयं त्रीतीयं चारस्येत्यर्थः । लेपिनस्य श्रीणि-  
त्यादि । तत्त्वीकर्त्तनेऽपि द्वौ द्वावनुकीर्त्येदिव्यर्थः ।

नारदेऽपि द्यामुष्यायगाका दर्युदीर्घ्या पिण्डोदके एष्ठक् । ऋक्यादर्जीशमादद्यु-  
र्बीजिक्षेचिकयोरात्मा ॥ अर्द्धाशमिति यथोचितभागोपलक्ष्याणम् ।

बौधायनः । अथाप्युदाहरन्ति । द्विपितुः पिण्डहनं स्थात् पिण्डे पिण्डे च  
नामनी । चयस्य पिण्डाः षस्यां स्युरेवं कुर्वन्ते दुष्यतीति ॥ षस्यां पितृपितामहप्रपिता-  
महानाम् । स एव । मृतस्य प्रसूतो यस्य लीवस्य आधितस्य वा । तेनानुमतस्य क्षेचे  
स क्षेचजः सञ्च द्विपिता द्विगोचस्य इयोरपि सधाकृष्टभागभवति ॥

मनुः । यत्कल्पयजः प्रमीतस्य लीवस्य आधितस्य वा । सधर्मेण नियुक्तायां स  
पुच्छः क्षेचजः स्मृतः ॥

अत्र सर्वच जीवति क्षेचिणि व्याधादिप्रतिरक्षपुच्छोत्पादने यथायोगं गुरुणा-  
मर्तुरपि नियोगः सम्बिच । मृते तु गुरुणामेव ।

तथा च क्षेचजो द्विविधो द्विपितकः क्षेचिकपितृकस्य ।

5. गृहे प्रच्छन्न उत्पन्नो जारात्यस्तात्सर्वर्णजातिमेन निर्मातिः क्षेचक्षामिनो  
गृष्ठजो नाम पुच्छः । मनुः । उत्पद्यते गृहे यस्य न च द्यायेत कस्य सः । स गृहे गृष्ठ  
उत्पद्यस्य स्यादस्य तत्पदः ॥ न चेत्यादि । पुच्छविशेषजन्मेणाद्यातोऽपि सर्वर्णजार-

अन्यत्रेण ज्ञातः । सजातीयेव्यव्योक्तस्तनयेषु मया विधिरिति योगीश्वरोक्तेकाच आत्मास्थाते ।

6. कानीनः कन्यकायामपरिशीलायां सर्वर्णाज्ञातः स मातामहसुतो यस्य सा कन्या तस्यैव पुच्छः इत्वर्थः । परिशीलायान्तु जातो बोडुरेव तु गूढजः । यथाह मनुः । पितृवेष्मनि कन्या तु यम्युच्छ्वनयेवेतः । तं कानीनं वदेनाक्षा वोदुः कन्यासमुद्दृव-मिति ॥ एतैर्वैक्यैरपरिशीलायां पितृष्टवावस्थितायां सर्वर्णाजारजः कानीनः स च मातामहसुत इत्युक्तं ।

तदितरुद्धं ब्रह्मपुराखीयं कल्पतरुक्षितिं वाक्यम् । अदत्तायान्तु यो जातः सर्वर्णेन पितृमृष्टहे । स कानीनः सुतस्तस्य यस्मै सा दीयते पुनः ॥ नारदवाक्यमपि तच्चैव । कानीनस्य सहेऽस्य गूढजायां वस्त्रं जायते । तेषां वोदु पिता ज्ञेयस्ते च भागइराः स्मृता इति । अचादत्तायां सर्वर्णात् पितृमृष्टहे जातस्य कानीनत्वमविरुद्धम् । यस्मै सा पुनर्दीयते तस्यासौ सुत इति विरुद्धं । नारदवचनेऽपि गूढोत्प्रसहेऽसहेकानीनस्यापि वोद्धैव पितेति प्रतिपादितम् । मनुनापि वोदुरिव्युक्तं न मातामहस्येति । या तु मिताक्षराकृता यद्यनूठायामुत्प्रस्तर्हि मातामहसुतोऽप्यूठायान्तदा वोदुरेवेति अवस्था ज्ञाता । सापि मनसि न चमत्कारमादधाति । तथा सति हि कन्याशब्दवाचायामपरिशीलायामजातत्वात् तस्य कानीनत्वन्दुर्वचम् । न च कन्याशब्दः अपत्यमाचपरोविशेषणवैयर्थ्यात् । गूढजादोनामपि ततोत्प्रस्त्रेनावस्थावर्तकत्वात् । सर्वाहि कस्य-चित्क्रन्तैव । ब्रह्मपुराखवचनविरोधस्य दुष्प्रितिरुद्धरस्त्रादत्यामिल्युक्तत्वात् । अतर्थव मानवविरोधोपि दुःसमाध एव । कल्पतरुकारेखापि परस्परविरुद्धवचनानि लिखितवता हृदयप्रून्यवद्वावस्थानभिधानाद्विरोध एव न प्रतिसंहितः । तेज हि मातामहसुतस्त्रानीनस्य बोधयन्ति बङ्गनि वचनान्युपन्यस्य तदितरुद्धे ब्रह्मपुराखनारदवचने तदनुपदमेव लिखिते । तच वश्चिष्ठस्य वचः । कानीनः पञ्चमः या पितृमृष्टसंख्याता जामादुत्पादयेत्स कानीनो मातामहस्य पुच्छो भवतीत्याह । अथाप्युदाहरन्ति । अपुच्छादुहिता यस्य पुच्छं विन्देत तस्यजः । पौच्छी मातामहस्तेन दद्यात्पितृं हरेऽन्नमिति ॥ नारदस्यैवम् । अचातपितृको यस्तु कानीनोमृद्धमाद्वकः । मातामहस्य दद्यात्पि तदितरुद्धं हरेततः ॥ वौधायनस्यापि । असंख्यातमनतिरुद्धां यामुपगच्छेत्स्यां यो जातः स कानीन इति ॥

अत्र प्रतिविद्धः । मातामहसुतत्वं कानीनस्य प्रतिपादयतां वचनानां सर्वधा या न इता तस्यां सर्वर्णाजातविषयत्वम् । वोदुः सुतत्वं प्रतिपादयतान्तु सङ्क्षिप्तायां सप्तपदीपर्यन्तं विवाहभावनाभावमर्थात्मप्राप्तायां यः सर्वर्णादुत्प्रस्तर्हितम् । अदत्तायामिति नारदवचने वौधायनवचने चानतिरुद्धामिति पदाभामसमाप्तविवाहभावनोचते न तु सर्वधादत्ता । युक्तस्तैत् । सङ्क्षेपेन पितृष्टवापगमपरिवे-द्वस्त्रलोत्पत्तेवपन्नमात् । पितुः सर्वधा खलापगमभावाच कानीनत्वमपदेशस्य परिवे-द्वस्त्रलोपदमेव तदीयत्वस्य च समवात् । पूर्वपितृखले तु तदुत्प्रस्तर्हितम् ।

त्वोपयस्तः । मनुवचनस्याप्यथमर्थः । या सङ्कल्पिताऽसमाप्तिवाहभावना अतश्च  
कव्या परिवेशभार्यात्पत्त्यानिष्टते । तादृशकन्यासमुद्धर्वं कालीनगमानं वेदुर्वेन विवा-  
क्षते तस्य बदेदिति । अतश्च पित्रवेशनीविपि सङ्कलमनुवादतया । विवाहानन्तरमेव  
भर्तुमृहप्रवेशत् । मिताच्छरायन्नस्याप्यथमर्थः । अगूडायां वेदुमनुपकान्तायाम् ।  
जन्मार्थां वेदुमुपकान्तायामिति । आदिकर्मविज्ञः । न तु भूते । समाप्तिवाह-  
भावनायाम् तु सर्वज्ञारजातो गूढजः । अतश्च एहे प्रकृत्या उत्पन्नो भर्तुमृहे तेना-  
क्षते जात इत्युक्तम् ।

7. पुनर्भूर्दिविद्या । विवाहमात्रेणाक्षताप्यन्तेन परिखीयमानेका । अन्या तु  
विवाहात्मागेव पुरुषसम्भोगदूषिता । तस्याक्षातः पौनर्भवः । अतश्चाक्षतायां क्षतायां  
वा जात इत्युक्तम् । मनः । या तु पत्ना परिवक्ता विधवा वा स्वयेच्छया । उत्पादये-  
त्पुनर्भूत्वा स पौनर्भव उच्चते । कात्यायनः । खोवं विद्याय यतिलं या पुनर्क्षमते  
पतिम् । तस्यात्मैनर्भवो जातो अक्षमुत्पादकस्य सः ॥ वशिष्ठविष्णू । पौनर्भवस्तुर्थ  
इति । चतुर्थ्यलन्तदनुकमापेक्षया ।

8. माता भर्त्ताज्ञया पिता वा यमच्छ्रौ दद्यात्स तस्य दत्तकः पुञ्चः । तथा च  
मनः । माता पिता वा दद्यातां यमद्धिः पुञ्चमापदि । सदृशं प्रोतिसंयुक्तं स ज्ञेयो  
दत्तिमः सुतः ॥ आपदीत्युक्तेनापदि दातुः प्रत्यवायः । मातापितरौ प्रवेकं मिलितौ  
वा । अद्विदिति दानप्रतियहप्रकारोपज्ञक्षमम् । सदृशं सर्वं । प्रीतिसंयुक्तमिति  
कियाविष्णेवव्याम् ।

एकः पुञ्च न देयो न प्रतियाद्यः । तथा च वशिष्ठः । शुक्रश्चोणितसम्भवः  
पुरुषो माता पित्रनिमित्तकस्य प्रदानविक्रयपरिवागेषु मातापितरौ प्रभवतः ।  
नत्येकं पुञ्चन्दद्यात्मतिमृहोयादा । स हि सन्तानाय पूर्वोवाप्तु तु खी पुञ्च दद्यात्मति-  
मृहीयादान्यथानुज्ञानाद्वासुर्दिति ॥

अत्र भर्तुमृहां विना स्त्रियाः पुञ्चप्रतियहनिवेधाददत्तानुज्ञे भर्तुर्दि एते विध-  
वया क्षतः पुञ्चोदत्तको न भवतीत्याज्ञस्तत्र अपुञ्चस्य गत्यभावात्पुञ्चकरणस्यावश्यकत्वं  
अववाच्छास्यमूलकतदनुज्ञायाक्षत्राप्यक्षते । न चैवमनुज्ञानादन्यत्रेति व्यर्थम् व्याव-  
र्त्यभावाच्छास्यीयानुमतेः सर्ववावश्यकतादिति वाच्यम् । मुमुक्षोः पल्यन्तरे पुञ्च-  
वतोवानुज्ञाया असम्भवाद्वार्या यदि खपुञ्चार्थमेव तं प्रतियहीतुमिष्टति तदा तां  
प्रतिवेधति । सर्वासां एकपलीनमेका चेतुपित्रिभी भवेत् । सर्वासास्तेन पुञ्चेता  
प्राह पुञ्चवतीर्मनुरिति पुञ्चकार्याद्वादेः सपलीपुञ्चेता सिद्धेर्भर्तुमृहां विना तादृशा  
पुञ्चो न कार्यः । उभयोरपि तत्र कार्यस्य तेज निष्टते । भर्तुर्दिः स औरते एव  
मुख्यः तस्या अपि दद्यवद्यगौण इति तादृशा भर्तुमृहतिमृहतेरो न प्रतियाद्य  
इति तात्पर्यार्थः । वक्षुतस्यु । भावृक्षमेकज्ञातानामेकाच्चेत् पुञ्चवान् भवेत् । सर्वे ते  
तेज पुञ्चेता पुञ्चिको मनुरत्रिवीदिति वचनवदेतस्यापि भावृपुञ्चस्य गौणदत्तकपुञ्चत्वादि-  
सम्भवेऽद्यः पुञ्चप्रतिनिधिर्वा व्यावर्थकातया भिताच्छराज्ञुतिभ्रिकादौ व्यावा-

सत्याद्वर्त्तिर्द वीक्षिभार्थ्या स्वातन्त्र्येवं तदनुभवौ न पुच्छिकरणीय इति भूत्तु-  
चानादन्वयेवस्यार्थः ।

मृते तु तस्मिन् यत्पारन्वयनुभवितेरेवापेक्षिता । एवं सति दृष्टार्थता भवति  
प्रतिवेधस्य । तस्मादनानुज्ञे मृतेऽपि भर्त्तर्द भार्थ्या दग्धादिकरणमविवरणम् ।  
मनुवचनदध्यस्य पूर्वोक्तार्थक्षेत्रे उपपत्तिरपि भित्ताक्षरादावेषेक्षा । यदपुच्छरिदध्य-  
यद्वाधिकारिकमपरे पली हुहितर इत्याप्रजःखीधनमित्यत्र च भावपुच्छसपली-  
पुच्छयोः पलगादिभर्त्ताद्यमावेऽधिकारप्रतिपादनविरोधापत्तेरिति । तत्र तत्त्वेव प्रपञ्च-  
यिष्यते ।

अनेकपुच्छसद्वावेऽपि ज्येष्ठः पुच्छो न देवः । ज्येष्ठेन जालमात्रेण पुच्छी भवति  
मानव इति । पुच्छकार्यकारये तस्यैव सुख्यत्वाभिधानात् ।

क्रीतस्थायदत्तक्षमित्वेष्वपि समानन्यायत्वादेकपुच्छयेष्ठपुच्छयेष्ठिष्वेष्ठः । अतश्च  
वक्तुप्रवाह्यादे इरिस्कन्द्रोपात्माने क्रीतेऽपि ज्येष्ठपुच्छत्वेष्विष्णिङ्गदर्शनं स ज्येष्ठपुच्छं  
निष्टुक्तान उवाचेति ।

पुच्छप्रतियहप्रकारस्य । पुच्छप्रतियहीव्यन् बन्धुनाङ्गहय राजनि चावेद्य निवेश-  
नस्य मध्ये आहृतिभिर्ज्ञवाऽदूरवान्वयं बन्धुसङ्खिष्ठाद्यमेव प्रतिगृहीयादिति वश्च-  
ष्टोक्तः । अदूरवान्वयमित्यत्र देशभावाविप्रवाह्यस्य प्रतिवेधः । एवं क्रीतादिष्वपि ।  
समानन्यायत्वात् । कल्पतरौ लदूरवान्वयमसङ्खिष्ठाद्यमेवेति पाठं लिखिताऽदूरवान्वयं  
सङ्खिष्ठितमातुलादिकम् असङ्खिष्ठाद्यमेव अविज्ञातगुणदोषमपि अर्थात्वकार  
इति आत्मातम् । सन्वेदे चोत्पन्ने दूरवान्वयं शूद्रमिव स्थापयेद्विज्ञायते च्छेकेन  
च वक्ष्यत्यायताभितीति च वश्चित्ववचनमधिकं लिखितैवं विद्यतम् । सन्वेदे  
वान्वयवानामसङ्खिष्ठानाऽज्ञातिसन्वेदे उत्पन्ने शूद्रमिव संक्षारहीनमेव स्थापयेत् ।  
शूद्रोऽपि हि ज्ञातपुच्छो भवतीत्यभिप्राय इति ।

9. क्रीतस्तु पुच्छस्याभ्यां विकीर्त इति । ताभ्यां मातापितृभ्यां मात्रा भर्त्तुज्ञाया  
पित्रा वा मूल्ययहवेनापरस्य दत्तः । एकपुच्छं ज्येष्ठपुच्छं वर्जयित्वा आपदीत्येव ।  
सजातीयेष्वित्युपसंहारात्सर्वर्गश्च । यत्तु मनुनोक्ताम् । क्रीतोयाद्यस्वपत्वार्थं मातापि-  
त्रोर्यमनिकात् । स क्रीतकः सुतस्तु सदृशोऽवस्थाऽपि वेति ॥ सद्गुर्वैः सदृशो-  
ऽवस्थाऽपि वेति आत्मेयं न तु जात्याऽसदृशं इति सजातीयेष्वित्वनेन विरोधापत्तेः ।  
दौधावनेऽपि । मातापित्रोर्हस्तात्कीतोऽन्वतरस्य वा योऽप्यत्यार्थं गृह्णते स क्रीतक  
इति ।

10. छन्दिमस्तु पुच्छर्थिना स्वयं धनक्षेत्रादिप्रदर्शनादिना प्रक्षेप्त्वा त्वं ने  
पुच्छो भवेति यः सवर्द्धः पुच्छीकृतः स उच्चते । मातापितृविहीनस्त्वेत् । सत्याद्वावेतत्पर-  
त्वमतया तेन पुच्छीभवितुमशक्यत्वात् । मनुविष्णु अपि । सदृशं यथाकुर्यातां गुण-  
दोषविवक्षयम् । पुच्छं पुच्छगुणैर्युक्तं स विशेषस्त्र छन्दिम इति । सदृशं सवर्द्धम् ।  
प्रकुर्यातां मातापितृस्त्रै मितितौ प्रत्येकं वा ।

11. इताक्षा तु स्थन्दसः स्थयमेव सात्मानमन्यसै इतवांक्षावाहम्पुत्रो भवा-  
भीति स्थन्मपुगते मातापितृविहीनस्ताभ्यां व्यक्तो वा सर्वर्णोपतिः स उच्यते । तथा-  
च मनः । मातापितृविहीनो यस्यक्तो वा स्थाद्वाराश्चात् । सात्मानं स्पृश्येद्यसै  
स्थन्दसस्तु स स्फृत इति ॥ अकाश्चात्मातिवादिकाश्चमन्तरेष्वै दुर्भिक्षादौ पोष-  
णाद्यसामर्थ्यादिना मातापितृभाव्यक्तः स्थतम् इत्यर्थः ।

12. यत्तु गर्भे स्थितेऽपरिणीतावस्थायां सर्वर्णज्ञाराज्ञातो गर्भिण्यन्तस्यां परिणीतशमानायां विद्धः प्राप्तः विद्मुखाभ इत्यस्य निष्ठानं रूपम्। बुद्धिविदेवादिस्तुवेद्य निष्ठासमन्वितकारस्य नकारः। स सहेष्टु उच्चते। स वोढः पुञ्चः। तथा च मनः। या गर्भिणी संस्क्रियते ज्ञाताऽज्ञातापि वा सती। वोढः स गर्भे भवति सहेष्टु इति ओच्छते॥ विष्णुरपि। सहेष्टु सप्तमः। गर्भिणी या संस्क्रियते तस्याः पञ्चः स तु परिणीतावस्थेति। सप्तम इति तदीयपाठकाभिपेक्षणा।

13. उत्तमो मातापितृभ्यन्यक्तो यो गृह्णते पुचार्थिना वेदपविज्ञो नाम  
यदीतुः पुचः । एतावपि सर्वावेव । तथा विष्णुरपि । अपविज्ञेकादशः पित्रा  
माचा च परिवक्तः स येन गृहीतः । वग्निः । अपविज्ञः पञ्चमोद्यं मातापितृभ्याम्-  
पास्यं गृहीयात् । एवादश्वं पञ्चमवं तत्स्तप्याठकमापेक्ष्या ।

14. यत्तु मनुषा गौणपुचमधे पारश्वात्थः शूद्रापुणः परिगच्छितः स चोरी-  
श्वरेण सजातीयेष्वयं प्रोक्तस्तनयेव मया विधिरियुक्तोपसंहारवालेन नियमकरवा-  
त्तस्य च कथच्चिदपि सजातीयत्वात्मवाङ्मात्रः । अतएव जातेऽपीयादिना यद्येन स  
उक्तः । दिजातस्य शूद्रापुचस्यात्माभावेऽपि पितॄश्वरप्रहृत्वाभावाच । तच वश्यते ।  
तथा च मनुः । यं ब्राह्मणस्तु शूद्रायां कामादुत्पादयेत्युत्तम् । स पारवद्वेष शब्दजस्तात्  
पारश्वः स्मृतः इति ॥ बौधायगेऽपि । दिजातिप्रवराशूद्रायां जातः कामात्पारश्व  
इति ।

15. तचौरत्सादयो गौवा: पुचा मुख्यस्तौरत्सर्व। तथा च मनः। क्षेत्र-  
आदीन् सुतानेतानेकादश यथोदितान्। पुनप्रतिनिधीनाऽऽः क्रियालोपाक्षीविदः।  
क्रियालोपात् परिवायदिक्रियालोपादिति प्रतिनिधित्वे हेतुः। अृतिप्रतिकाशान्।  
जैत्रत्साभावे तत्त्वांकमाङ्गादिक्रियालोपादविभूते मनीविद अवयवं एकादश पुन-  
प्रतिनिधीन् कर्त्तव्यलेनाऽऽदिति आत्मातम्। दृहस्यातिः। पुचालयोदश प्रोक्ता  
मनुगा वेनुपूर्वाणः। सन्नानकारबन्नेवामौरसः पुचिकादयः। पुनप्रतिनिधी कर्त्त-  
व्यलेनाऽऽदिति आत्मातम्। दृहस्यातिः। चाच्यं विना यथा तैवं सद्भिः प्रतिनिधिः  
सतः। तथेकादश पुचालु पुचिकौरत्सयोर्विना। ब्रह्मपुराणे। दत्तकाच लघवन्दः  
स्त्रिमः क्रीतर्द च। अपविज्ञात्य ये पुचा भरवीयाः सदैव हि। भिन्नगोचाः पृथक्  
पिण्डाः पृथग्वंश्चकरात्मया। त्रृतके त्रृतके वापि अव्याप्तिचतुर्व्यु भागिनः। अपि  
वस्त्राङ्गदाट्याः क्षेत्रीजवतान्मया। श्रूतो दातः पारद्वये विश्राताः विद्यते क्षेत्रित्।  
रात्रां तु द्वापरद्वयानां निवं क्षयवदान्मया। अपि संयामधीयानां अदाचित् वा

भवन्ति ते । औरसे यदि वा पुच्छस्थवा पुच्चिकासुतः । न विद्यते तत्र तेषां विज्ञेयाः क्षेत्रजादयः । एकादश एथग्भावा वंशमात्रकरात्मुते । आज्ञादि दासवत्तर्वे तेषां कुर्वन्ति नित्यशः । गूढोत्प्रवृत्त कानीनः सहोऽः क्षेत्रजल्लथा । पौनर्भवव्य वैश्वानां राजदण्डभयादपि । वर्जिताः पञ्च धनिनां शेषाः सर्वे भवन्त्यपि । मूर्दाणां दासवृत्तीनां परपिण्डोपजीविनाम् । परायत्पश्चरीरावाङ्ग क्षिति युच्च इत्यपि । तस्मादासस्य दास्यात्म जायते दास एव चौति ॥

16. एवमेतेषां पुच्छाणां स्वरूपप्रिरूप्य तेषान्दायग्रहणं निरूप्यते । तत्र योगीश्वरः । पिण्डोदृश्वरूपेषां पूर्वाभावे परः परः । परःपर इति बीमादर्शनात् पूर्वपूर्वाभाव इत्यपि बीमावेष्या ।

17. औरसपौचिकेयसमवायेऽप्येवमौरसे सति पुच्चिकासुतस्य दाययहकाभावे प्रस्तते मनुरपवदति । पुच्चिकायां छातावान्तु यदि पुच्चोऽनुजायते । समस्तत्र विभागः स्थान्त्र्येषु ताता नालिहि लिप्ता इति । दृहस्यतिरिपि । एक एवौरसः पिच्चे धने स्त्रामी प्रकीर्तिः । ततुत्त्व्या पुच्चिका प्रोक्ता भर्त्यास्य स्वपरे सुताः ॥ न च पुच्चिकाया एव प्रथमं पुच्चे जाते पञ्चादौरसेत्पत्तौ पुच्चिकापुच्छस्य उपेक्षलादस्तीत्याच्येषांश्चभागिता भवेदिति युक्तम् । तस्य पौच्छलात् । तदाहु मनुः । अलाता वा छाता वापि यं विन्देस्त्रहस्यासुतम् । पौच्छी मातामहलेन दद्यात् पिण्डं इरेक्षमनिति । पुच्चिका हि पुच्छलात्पुच्चो दौहितोऽपि पौच्छलातान् पौच्छी भवति । पौच्छस्य च उद्देश्येनाश्वातिरेको नैव श्रुतः । न च अस्ता यो जायते पुच्चः स मे पुच्चो भवेदिति पुच्चिकापुच्छस्यापि पुच्छलाभिधानात्तदिरोध इति वाच्यम् । मनुविरोधेन तस्य गौण्यपिण्डहस्तलनिमित्पुच्छलाभिप्रायत्वात् । पुच्चिकायाः पुनरपवत्वामावाद्यथा गौण्यं पुच्छपदप्रतिपाद्यत्वं तथा स्त्रजन्यपुच्चिकाजन्यपुच्छस्यापि । पुंख्वे सत्यपि अन्यत्वामावात् । अन्यपुस्त्रस्यैव पुच्छपदशब्दत्वात् ।

18. तथान्येषामपि पुच्छाणां पूर्वपूर्वसत्त्वे सर्वमात्रानर्हत्वमनेन प्रसङ्गमपवदिति विशिष्टः । तस्मिन्वेततिरूप्यहीत औरस उत्पदेत चतुर्थभागभागी स्थाहत्तका इति दत्तकायद्यत्वं क्रीतादीनामुपज्ञक्षयं पुच्चीकरणाविद्येषात् । उत्पन्ने त्वौरसे पुच्चे चतुर्थांश्चहराः सुताः । सर्वर्णा असर्वर्णात्मु यासाच्छादनभाजना इति कात्वायनवचनाच । सर्वर्णाः क्षेत्रजल्लथयेषु सत्यौरसे चतुर्थांश्चहराः । असर्वर्णाः कानीनगूढोत्प्रवृत्तसहोऽपौनर्भवात्मे तु सत्यौरसे न चतुर्थांश्चहराच्चपि किञ्चु यासाच्छादनमात्रभागिन इत्यर्थः कात्वायनवचनस्य । अतएव विष्णुः । अप्रश्लात्मु कानीनगूढोत्प्रवृत्तसहोऽज्ञाः । पौनर्भवव्य नैवेते पिण्डरिक्षांश्चभागिन इति ॥ औरसे सति कानीनादीनां चतुर्थांश्चभागित्वं प्रतिवेधति । कानीनादीनामपौरसाद्यमावेऽप्येव पिच्चस्वप्तव्यनमहत्वम् । पूर्वाभावे परःपर इति वचनात् । यच्च मनुवचनम् । एक एवौरसः पुच्चः पिच्चस्य वस्तुः प्रस्तुः । शेषाकामाच्छार्द्धस्यार्थं प्रदद्यात् प्रजीवनमिति । वदपि दत्तकादीनमौरसप्रतिकूचलेष्वनानिगुणत्वे च चतुर्थांश्चदिग्विवेषपरद्वानीन-

दिपरस्य । तेषां सत्यौरसे यासाक्षादनमाचभागित्वस्त्रोक्तुत्वात् तदेवमैलाकाल्यगत् । क्षेचजस्य तु सत्यौरसे पञ्चमष्ठांश्चौ मनुजैवोक्तौ । बहुन्तु क्षेचजस्यांशं प्रदद्यात् पैठकाङ्क्षनात् । औरसे विभजन् दायं पितं पञ्चमसेव वेति । प्रतिकूलात्मनिरुद्धात् समवाये बहुमेकतरसद्वै पञ्चमसिति अवस्था । यस्तु समयधनमोक्ता स्यादौरसेऽपि जघन्यजः । चिभागं क्षेचजोभुङ्के चतुर्थं पुच्छिकासुतः ॥ इत्यादि ब्रह्मपुराणादिवचनैः समभागार्हतया मन्दादिभिरक्षास्य पुच्छिकापुचस्य चतुर्थांशं उक्तः पञ्चमषष्ठार्हतयोक्तास्य क्षेचजस्य द्वतीयांश्चक्षोक्तः स . पुच्छिकापुचस्यात्मनिरुद्धात्मेत्सवर्णम् । क्षेचजस्य चायन्तसगुणात्मानुकूल्ययोर्थवस्थापनीयः ।

औरसाभावे दत्तकस्याखिलधनयहृणार्थं एथगारब्धं मनुना उपपन्नो गुणैः सर्वैः पुच्छो यस्य तु दत्तिमः । स हृतैव तदिक्षं संप्राप्नोऽप्यन्यगोचतः ॥ खगोत्संप्राप्तः किमुतेति किमुतपर्यार्थाऽपि शब्दः । जनकधनयहृणार्थं तस्य प्रतिविझन्तेत्वै । गोच-रिक्षे जनयितुर्भु भजेऽचिमः सुतः । गोचरिक्षानुगः पिण्डो अपैति ददतः खधेति ॥ ददतः सम्बन्धी पिण्डलतोष्यपैति । खधा पिण्डप्रिहेतुरिति पिण्डविशेषगम् । गोच-रिक्षानुग इति हेतुर्गर्भम् ।

दत्तकमाचविषयकमपि सत्यौरसे चतुर्थांश्चहरत्वप्रतिपादकं एथगारब्धं वशिष्टेन । तस्मिंस्तेवतिगृहीत औरसउत्पद्येत चतुर्थभागभागो स्यादत्तक इति । ओतादि-साधारणन्तु काव्यायनीयं प्रागेव पठितम् । तत्र द्वतीयांश्चहरा इति कल्पतरलिखित-पाठो यदि साकाररक्षार्हं दत्तकादीनामौरसापेक्षाया सगुणात्मे द्वतीयांश्चहरत्वप्रतिपादयन्ते ।

मनुजैव क्षेचजस्यौरससमभागभागित्वमप्यक्षम् । यवीयान् उद्येष्ठभार्यायां पुच्छ-मुत्तादयेद्यदि । समलक्ष विभागः स्यादितिधर्मो अवस्थितः । उपसर्वनं प्रधानस्य धर्मतो नोपपद्यते । पिता प्रधानं प्रजने तस्माङ्गर्भेण तम्भजेत् । धनं यो विभृयाङ्गातु-र्मतस्य च्छियमेव वा । सोऽप्यत्रं आतुरत्याद्य दद्यात्स्वै तद्वनम् । यदेकरिक्षिनौ स्थातामौरसक्षेचजौ सुतौ । यस्य यत्पैठकं रिक्षं स तद्वृहीत नेतरः ॥ यदप्यौरस-प्रक्रमात्मसमभागभागित्वं क्षेचजस्य तत्रिलृपितमेवेक्षमित्वाभावति । तथापि वाक्यविरोधे प्रक्रमस्य वाच्यात्माद्विजिसमभागित्वपरन्तदिति बोध्यम् । अतर्यवेत्तरवचने पितु-र्वीजिनः प्राधान्यमुपन्यस्यति । चोऽप्यत्रं आतुरत्याद्येवनेनापि यस्य क्षेचजस्यादीयन्वग-नक्षमै दद्यादिति आठस्थानीयत्वात्स्य समभागितां प्रतिपादयति ।

एवमन्याच्यप्युच्चावचभागान् क्षेचजादीनां प्रतिपादयन्ति छहस्यादिवचनानि कथचिद्वस्थापनीयानि । तत्र द्वहस्यतिः । क्षेचजादायाः सुताच्चान्ये पञ्च बहु समभागिनः । हारीतः । विमजियमाद एकविंश्चानीनाय दद्यात् । विंश्चमौर्भवाय । एकोनविंश्च द्वासुव्यावस्थाय । अद्यदशं क्षेचजाय । सप्तदशं पुच्छिकापुचाय । इतरानौ-रसाय पुचाय दद्युः । ब्रह्मपुराणे । समयधनमोक्ता स्यादौरसेऽपि जघन्यजः । चिभागं क्षेचजो भुङ्के चतुर्थं पुच्छिकासुतः । छपिमः पञ्चममार्गं बड्डागण्डुसम्बवः ।

सप्तांश्चापविद्वत् कानीनच्चाकुमांश्चं । नवभागं सहेऽच्च क्रीतो दशममनुते । पौनर्भवलु परतो द्वादशं स्थयमागतः । चयोदशमभागलु शौक्रो शुक्रो पितुर्जनात् । तद्वौच्चो वा धर्मिणो ब्रह्मचार्यपथवा पुणः । अचौरसे सतीति सर्वच च्छेयः । पूर्वाभावे परःपर इति वचनात् । ब्रह्मपुराणीयस्य समयेवादिप्रथमज्ञेकस्य पूर्वमेव विषयस्वख्योक्ता । अन्वेषामपि गुणतारतम्येन देशाचारानुसारेण वा यथायथं अवस्था ददृश्या । षट्भागं षष्ठमागम् । नवभागं नवमं भागमित्यर्थः । अन्यथार्थासङ्गतेः प्रक्षम-भङ्गप्रसङ्गाच । परतोदशमात्परमेकादशम् । चयोदशमेवार्षम् । शौक्रः शूद्रापुच्चः ।

19. यदपि मनुना पुचाणां षट्कदयसुक्ता पूर्वषट्कस्य दायादबान्धवत्वम् उत्तरषट्कस्य चादायादबान्धवत्वमुत्तम् । औरसः क्लेच्छज्ञेय दक्षः क्लृच्छिम श्व च । गूढोत्पन्नोऽपविज्ञेय दायादा बान्धवाच्च षट् । कानीनच्च सहेऽच्च क्रीतः पौनर्भवलत्तथा । स्थयदत्तच्च शौक्रच्च षड्दायादबान्धवा इति । तदपि स्पृष्टिद्विषयसमानोदकानां सद्विहितरिक्ष्यहरान्तरभावे पूर्वषट्कस्य त्रिक्ष्यहरत्वमुत्तरषट्कस्य तु तत्रात्मि । पितृष्टक्ष्यहरत्वन्तु सर्वेषामपि पूर्वपूर्वाभावे समानमेवेति तदायादायादत्वविभागो नोपयदते । पूर्वाभावे परःपर इति वचनात् । एकरवौरसः पुच्चः पितृस्य वसुनः प्रधुरित्युक्ता न भातरो न पितरः पुचारिक्ष्यहराः पितुरिति वचनस्य गौण-पुचाणामेव सर्वेषामित्यरिक्ष्यहारित्यप्रतिपादनपरत्वाच । दायादशष्टस्य दायादामपि दापयेदित्यादौ पुच्यतिरित्यरिक्ष्यहारित्येव प्रचुरप्रयोगाच । बान्धवत्वं सपिङ्ग-समानगोचत्वाभ्यासुदकानादिकार्यकरत्वं षट्कदयस्यापि समानमेवेतेतदर्थकाम ।

यत्तु हारीतवचनं । वहवन्मुदायादाः सांख्यां स्थयसुत्पादितः क्लेच्छजः पौनर्भवः कानीतः । पुचिकापुचो गूढोत्पन्नो एव इति बन्मुदायादाः । दक्षः क्रीतोऽपविज्ञः सहेऽच्चः स्थयसुपगतः सहसादृश्येवन्मुदायादा इति । सांख्यां स्थयसुत्पादित औरसः इत्यर्थः । सहसा दृष्टो ये मातापित्रादिविहीनोऽकस्मादृश्यः केनचित् परितोष्य मम त्वं पुचोभवेद्युक्तालार्थेति प्रतिपदते । क्लृच्छिम इति यावत् ।

तत्र मनुविरोधः स्थृतः । तेन कानीनपौनर्भवयोरबन्मुदायादमध्ये परिगणनात् । हारीतेन बन्मुदायादमध्ये दत्तक्ष्यमापविज्ञेय च अत्यथात् । तस्मादेवं सर्वर्णादिभेदेन देशाचारभेदेन वा विरोधः परिवर्तयोः ।

बौद्धायनस्तु मनुसारेणैवाह । औरसं पुचिकापुचं क्लेच्छन्दत्तक्ष्यमौ । गूढजं वापविज्ञेय जटक्ष्यभाजः प्रचक्षते । कानीनच्च सहेऽच्च क्रीतम्पौनर्भवलत्तथा । स्थयदत्तक्ष्यवदच्च गोचभाजः प्रचक्षत इति ।

औरसपुचिकापुचक्लेच्छजानीनगूढोत्पन्नापविज्ञसहेऽपौनर्भवदत्तक्ष्यस्थयसुपगत-स्थातक्ष्यकीतानभिधायाह देवतः । एते दादश पुचास्तु सन्तव्यर्थसुदाहृताः । आत्मजाः परजात्येव जब्बा यादृश्यकालाद्या । तेषां षट् बन्मुदायादाः पूर्वेऽन्ये पितुरेव षट् । विशेषज्ञापि पुचाणामानुपूर्वं य विशिष्यते । सर्वे द्वौनौरत्स्थैते पुचादायहराः सूताः । औरसे पुनरत्पन्ने तेषु ज्येष्ठव विद्यते । तेषां सवर्णां ये पुचास्ते द्वयीवांश्चभागिनः ।

हीनालामुपजीवेषु यासाच्छादनकंष्टताः । आत्मजलादिकं परिगच्छितेषु यथावर्थं स्पृष्टमेव । अनौरसख्य न विद्यते औरतेषु यस्तत्येति मञ्जीर्णिः ।

नारदेऽपि । वैरसः क्षेत्रजच्चैव पुणिकापुण्यशब्दच । कानीनक्ष सहेऽप्य  
मूढोत्तम्भास्यैव च । पौनमवैऽप्यविज्ञ दत्तः क्रीतः छत्तलाधा । लयशोपगतः पुणा  
दादैते प्रकीर्णिताः । एवं बहुव्युदावादाः बहुदायाद्वावादाः । पूर्वः पूर्वः कृतः  
चेष्ठो अवन्दो योद्धानूपारः । क्रमादेते प्रवर्त्तन्ते मते पितरि सज्जने । ल्यायसो  
ल्यायसोऽपावे अधन्यक्षद्वाप्न्यात ।

मनुः । अयसः अयसेऽवामे पापीयाग् रिष्वमर्हति । वह्यत्वेतु सदृशः सर्वे रिष्वस्य भागिनः ।

दृहस्यति । दत्तोऽपविदः कीरत्या छातः शौकलयैव च । आतिमुद्रामध्यमात्से  
सर्वे रिक्षसुताः भूताः । क्षेत्रं गर्हितः सद्विकाशा पौरभवः सुतः । कानीनस्य  
वर्णान्वे लग्नेऽप्यलयै च ॥

हरीतः । शूक्रपुत्राः स्वयंसा वे चैते श्रीतपाः सुताः । सर्वे ते मौर्धिकः प्रोत्ताः काषडपृष्ठा न संश्यः । स्वकुलं पृष्ठतः छात्वा येवै परकुलं ब्रवेत् । तेन दुर्घट-देनासौ काषडपृष्ठो न संश्यः ।

यमः । आपहतो द्वापगतो यज्ञ स्थादेवावीसतः । सर्वे ते मनुषा प्रोक्षाः  
काण्डएषा क्षयत्तथा । कुलं काण्डमिति खार्तं यस्मात् पूर्वाब्दि ते जडः । तच  
व्येष्टतरो यः स्थार्तं वै काण्डे विनिर्दिश्येत् । स्वकुलं एषाः छाला योद्धे परकुलं प्रवेत् ।  
तेन द्वापरितेनासौ काण्डएषु इति सतः । वैश्वावी शूद्रेति कथ्यतरदै ।

20. उक्तोपसंहारमुखेन नियममाहात्र योगीश्वरः । सजातीयेष्वयम्बोक्तात्-  
नयेषु मया विधिः । अयं पूर्वाभावे पठः परोधनभागित्क्षो ये मया विधिः स  
सजातीयेष्वत्प्रदक्षसजातीयेष्वे क्षेत्रे न विजातीयेषु तच कालीनगूढोत्थ-  
स्तसेष्वादपौ नर्मदानां सर्वर्णत्वं नक्षत्रारेव न स्त्रुते वर्णातिजाक्षात् वर्णात्-  
तिविवेकमभिधाय विजात्स्वेवविधिः स्मृत इति योगीश्वरेष्वाभिधानात् । अनुलोमवानां  
मूर्खाभिविक्षादीनामौ देवेवानां र्भावात्प्रतिष्ठिष्वेकभागा इत्यादिगा भाग्यमुपित्ता ।  
तेऽपेक्षामप्यभावे द्वैतजादयः पितॄप्रतिष्ठादिवः ।

21. शून्यापुण्यस्य त्वैरसत्त्वेऽपि न ज्ञात्वा पित्रवधमभागित्वमन्वाभावे ऽप्यल्लि ।  
यथाह मनः । यद्यपि स्थानु सत्युचो यद्यपुण्योपि वा भवेत् । न अधिकं दद्यमाद्याच्छून्या-  
पुण्याच धर्मतः ॥ यदि सत्युचो विद्यमानः सद्बाण्युचो यदि वाण्युचोऽविद्यमानः सद्बाण्य-  
पुण्यो भवेत्प्रियम्भूते चेत्प्रादिः पुण्योऽप्योवा रिक्षवाहारी शून्यापुण्याच तज्जाद्यमांश्चा-  
दधिकं न दद्यात् । चक्रादेव वशनात्सवर्वापुण्याभावे ज्ञानिवावैशापुण्यवैः सद्बाण्यिप-  
पित्रवधमग्रहां गम्यते । यस्तु प्राणू चतुर्जित्येषामागा इत्यादिना शून्यापुण्यलीक्षभाग-  
भागित्वं वैगीच्छारादिभिर्वक्तव्यादतिसद्युत्तमूर्णापुण्यविद्ययं वेदित्वमन्वया मानविदि-  
रेषात् । प्राणाद्यच्छप्तिविद्यामिति मनवश्चन्तु प्रागेव चाल्यात्म ।

22. शूद्रधनविभागे विशेषमाह यात्रावदः । आतोऽपि दासां शूद्रेष्वा  
कामतोऽश्वरो भवेत् । मृते पितरि कुरुते अतरस्तर्जभागिनम् । अष्टाङ्गो  
इतेरत्वं दुष्टिवां सुताहृतेति । शूद्रेष्वा दासामुत्पदः पुञ्चः कामतः पितुरिक्ष्या  
भागं कमते । पितुरुर्ध्वं अतरः परिक्षीताशूद्रापुचालन्दासीपुञ्चं समागर्जभा-  
गिनं कुरुः । अत्र बड्डवचनात्परं सख्यामागदर्जन्द्युरितिं न अभितव्यम् । तथा सति  
बड्डभागस्य ततोऽप्यतिक्षुद्धनत्वापत्तेरव्यवस्था स्यात् । किञ्चेकपुञ्चस्य याकान्  
भागस्यात्तर्जभागं शूद्रापुचापुञ्चतपुचाद्यभावे तु दासीपुञ्चोऽपि छत्रं शूद्रस्य पितुर्जनं  
कमते इत्यर्थाद्यते ।

23. शूद्रयहयाद् विजातिभो दासामुत्पदः पित्रिक्ष्याप्यंतर्मर्जभागं वा  
तदूर्ज्ज्ञं कमते छत्रतज्जनयहयं दूरापालमेव किञ्चप्रतिकूलस्वेष्वीवनमाचमिति  
प्रतीयते ।

## CHAPTER III.

### PART I.

1. सुख्यमौकपुचाभावे मृतपतितपरिक्षाजकादिधनयहयाधिकारित्वं उच्यन्ते ।  
तत्र योगीश्वरः । पली दुष्टिरस्त्रैव पितरौ अतरस्तथा । तत्पुत्रा गोचरा  
वन्मः शिष्यः सत्रात्माधित्वः । एवामभावे पूर्वस्य धनभागुत्तरोत्तरः । सर्वातस्य  
स्थापुञ्चस्य सर्ववर्णव्ययं विधिरिति । अपुञ्चस्य पुर्वोत्तरादृशविधपुञ्चरहितस्य  
सर्वातुस्य मृतस्य पलग्राहयः पूर्वपूर्वाभावे पाठकमेवोत्तरोत्तरव्ययं एष्टीयुरित्वर्थः ।  
अयं विधिः सर्वेषु मूर्त्तिभित्तावविक्षाद्यनुलोममप्रतिलोमजादिषु वर्णेषु च ग्रामा-  
दिषु वेदितव्यमित्वर्थः ।

2. तत्र प्रथमं पली धनद्वारित्वं । पलीश्वर्द्देवैव विवाहसंख्यात् । पर्युर्णो  
यद्वस्यिमे इति यादिविस्तृतात् । आत्मभिप्रायेव चैकवचनं तेव बङ्गपञ्चेत्यत्त्र  
एवस्य तदा सर्वाः सजातीया विजातीयाः क्रमेव वथावयं भर्तुष्वर्णं विभव्य एष्टीयुः ।

पलीश्वरादासुतादिवाहोठायायहयं सर्वविवाहोठप्रवृत्तातसद्वावे नालीति  
गच्छते । तथा स कृतिः । क्रयक्षीता तु या नारी न सा पली विधीयते ।  
न सा हैवे न सा पित्रे हासीक्षाक्षवेदो विदुरिति । अत्र च दासीत्वक्षयनमहृष्टार्थ-  
कर्मसु सहाधिकाराभावाभिप्रायेव न तु दासीप्रवृत्ताभावाभिप्रायेव । विवाहिताख्येव  
पद्वाहरत्वाधात् अतश्च मनुर्धर्मस्यर्थविवाहावयुक्त्या सन्तानगतावेव मुखदीवा-  
दात् । अविद्यौ चीविदाहैविद्या भवति इत्या । गिन्दिते गिन्दिताकृतान्त-

स्माप्निष्ठान्विवर्जयेदिति । प्रजाया निन्दितत्वमपि सदृक्षुभावत्वाभावो न तु वर्णजालभावः । परिशेषुः परिशेषायासुतप्रत्यग्नाचत्वय वर्णजातिव्यञ्जकत्वात् । विप्रालेख विधिः स्मृत इत्युक्तेः । अतएव न सा दैवते न सा पितृ इति सहाधिकारएव प्रतिविज्ञः ।

तथा च पित्र्यादिकर्मार्हतापि पतिदायहरत्वप्रयोजिकेति पलीपदेन ज्ञाप्तम् । अतएव श्रौतस्मार्तसहाधिकारिणी पतिव्रतैव भर्तृधनभागिनीत्वाह प्रजापतिः । पूर्वं मृता त्वप्रिहेत्वं मृते भर्तृदि तद्वनम् । लभेत् पतिव्रतं नारी धर्मरूप सनातनः । उद्धमनुरुपि । अपुचाशयनमर्तुः पालयन्ती ब्रते स्थिता । पत्न्येव दद्यात्तप्रियं कृत्वमंशं लभेत चेति ॥ अत्रोत्तरार्ज्ञक्षपाठक्रमस्यार्थक्रमेण वाधात् प्रथमं कृत्वमंशं लभते पञ्चात् पिण्डं दद्यादिति स्मृतिविक्रिकाकारेणोक्तं । तद्वेद्यम् । क्रमे तात्पर्याभावात् । उभयाधिकारप्रतिपादनमाच्चपरत्वादधनस्य । अन्यथा यावदंशाभं भर्तृन्येत्विविलम्बोऽपि प्रसन्न्येत । सचानेकस्मृतिनिविज्ञः । अदृष्टकर्त्त्वपनायपत्तिस्य । पलीपदेवेकारेणापुच्छस्यान्त्यकर्मण्यप्यपुच्छपुच्छत् । पलीयादिवचनादुभाष्टादिसल्वेऽपि सैवाधिकारिणीति दर्शितम् ।

अथमेवार्थः प्रपञ्चितः प्रजापतिना । जड़मं स्थावरं ऐम कुप्यन्तान्यं रसाम्बरम् । आदाय दापयेक्षाङ्गं मासवाण्मासिशादिकम् । पिण्डवगुणदौहित्रान् भर्तुः सखीयमातु-लान् । पूजयेत्क्षाप्यपूर्तीभ्यां दृढांश्चाप्यतिथीन् स्त्रियः ॥ कुप्यन्तपुसीसादि । क्षयमित्यर्थं सङ्गस्त्रियतमग्नादि । पूर्तजड़ातादि कर्माङ्गदक्षिणादि । इतदुक्तमभवति । स्थावरेणापि सहितं सर्वं भर्तृधनमधिगत्य धनसाथं स्वधिकारिकं पशुरात्मनस्य अयःसाधनकर्म पतिपक्षीयपुरुखारेण पल्न्या कार्यमिति ।

एवं वर्तमानाया ये पीड़कारिणीस्ते राजा औरवद्धगा इत्याह स एव । सपिण्डा वान्धवा ये तु तस्याः स्युः परिपन्थिनः । हिंस्युद्दीनानि तान् राजा औरद्धेन ग्रासयेत् ।

स्मृतिविद्विदाद्यादिविविधं स्मृतम् । तत्त्वाया स्थावरं सुक्रा लभते मृतमर्तुवेति । वचनं लिखितम् । जड़मं स्थावरमित्यादि प्रजापतिवचनविरोधपरिहाराय दृष्टविश्वीलपलीपरत्वमविभक्तप्रथमविवर्तनं वान्योक्तम् । दृष्टस्थायि छोड़यन्ते न स्त्री स्थावरमर्हतीति । तत्त्वविरोधेनापास्य दुष्टिहरहितपलीविवर्तने व्यवस्थापितव्य ।

तत्र मदनरत्नकारेण भिताक्षराक्षयतद्वल्लायुधादिसम्बद्धयशाकरेवजिखनाभ्य-मूलत्वमस्य । जड़मं स्थावरमिति प्राजापत्यस्य च सर्वच लिखनात्ममूलत्वमिति दूषबसुका तदुत्तवस्थायाच्च लोपेक्षामाचकल्पितव्येनायुक्तमभिधाय समूलात्मेऽपि स्थावरादिसमयधनयह्यां ब्राह्मादिविवाहेऽनाविवर्तनद्वयनेषु पलीष्टप्रयोगात् । स्थावरयह्यप्रतिवेधकादृहस्यतिवचनस्तु जायाक्षीश्वरमप्रयोगादासुरादिविवाहेऽनाविवर्तने चर्यं व्यवस्था छाता ।

**आसुरादिविवाहीतावा:** यज्ञीश्वरेणायाहकाञ्चनादिश्वर्द्देषेतदधनागामपि  
तदेवमूलपत्रया तत्पत्रत्वात् सूतिचन्द्रिकायामेव निरक्षा । यत् तदुत्तरवचनावामौ-  
त्प्रेक्षिकालमुक्तं तदपि न । दुहितावत्वे तत्स्तामागदारेव खावरखोपभोगधनखाम्युपका-  
टयोः समवात् खावरमपि याद्यं तत्रहितायात् तदभावात् तद्युहितमिति तथापि  
वीजसम्बवात् । अतएव पितुरपि खावरे खार्जितेऽपि पुण्यानुमतिमक्तरेणानधिकार  
प्रागुक्तः ।

3. यत् मृहीतधनायाः परस्तालङ्घनेन शीघ्रमाचन्द्रानाधीकारविकायेषु तु  
नाधिकार इति । एते भर्तृरि भर्तृशं क्षमेत कुलपालिका । यावज्जीवज्ञ हि स्वाम्य-  
न्दानाभ्युविक्रिय इति कात्यायनवचनात्प्रतीयते । तदपि दृष्टार्थं गतर्त्तकादिदाना-  
सात्स्त्रपरम् । अद्वार्थदाने तदुपयेतिगिनोराधीकारविक्रियेष्व तेनैवाधिकाराभि-  
धानात् । ब्रतोपवासनिरता ब्रह्मचर्ये अवक्षिता । दमदानरता निष्ठमपुत्रापि दिवं  
ब्रजेदिति । दिवं ब्रजेदित्यनेन काम्भेऽपि दानादौ तस्या अधिकारः प्रतीयते किमुत  
निवेद नैमित्तिके च । जड्डमं खावरं देमेवादिपूर्वोदाहृतप्रजापतिवचनात् ।  
तत्रापि पूर्व्युहयात्काष्टेवप्यधिकार आयातोति सूतिचन्द्रिकाजारादयः ।

यत्तापरमपि कात्यायनवचनमेव । अपुञ्जा श्याममनुः पालयक्ती गुरौ खिता ।  
सुज्ञीतामरवात्त्वानाता दायादा ऊर्ज्जमाप्नुयुरिति ।

तत्र सूतिचन्द्रिकाकार आह । ज्ञानाता दायादकारितधनविनियोगप्रतिबन्धं  
सहमाना सत्यामरवाहुङ्गीतेवर्थः । इदम् रक्षायाभद्राणाद्यसमर्थेषु कार्यान्तरवयेषु  
अशुरादिष्व पत्न्या यत् स्वयमेव खजीवनार्थमुपात्मविभक्तं तदिष्यम् । विभक्तवच-  
विषयत्वे मन्वादिपरिनिष्ठितार्थवाधापत्तेऽरिति ।

पौरस्त्वालु गुरौ अशुरादिसमीपे खिता भर्तृधनं सुज्ञीतैव । न तु स्त्रीधन-  
वचयेष्वम्भानाधानविक्रियादि कुर्वीत । तस्या ऊर्ज्जं दायादा दुहितादयस्तद्वानाधिका-  
टियो गृहीयन्ते तु ज्ञातयः । तेषां दुहितादिष्वो जघन्यत्वात् तद्वाधकत्वानुपपत्तेः ।  
पली हि तेषां बाधिका । तदधिकारप्रागभावप्रवृत्तिसंयोगविशेषाद्वाधकाभावस्य  
तद्वाधानुपपत्तेः । नापि स्त्रीधनाधिकारिष्वो गृहीयुः । कात्यायनवचनेनैव स्त्रीधनाधि-  
कारिष्वा वचनान्तरैवत्वात् पौनवक्षापत्तेः । अतः पली दुहितरस्तेवादिना ये पूर्व-  
पूर्वस्त्राभावे परभूता अपुञ्जासंक्षिप्तिभक्ताद्यतधनाधिकारिष्वो निर्दिष्टात्मे यथा  
पत्न्यधिकारप्रागभावे गृहीयुक्ताया पत्न्या जाताधिकारादयाः प्रवृत्तेऽपि भोगवशिष्टं  
गृहीयुः । तदर्थीं दुहितादीनमेवान्यापेक्षया ब्रतोपवारवक्त्वात् युतात्मदधिकाराः ।  
दानधर्मेषु महाभारतवचनमप्येतदुपोद्वलकम् । स्त्रीयां स्वप्तिदायत्तु उपभोगपत्ता  
स्फूतः । नापहारं खितः कुर्याः प्रतिविजात्कथस्तेति । उपभोगोऽपि न स्वस्वखा-  
दिना । किन्तु पत्न्युपकारादय देहधारवक्त्वान्वेपयोग्युपभोगानुज्ञाम् । एवम् दुहित-  
स्तिना पितृवग्रुदौहितानिवादिना पितृवयपदेन भर्तुः सपिण्डोपजक्षाज्ञाहौहितय-  
देन तसुहितसन्नानेपवक्त्वान्वानुजात्काष्टीयपदाभ्यान्माहसुक्षेपजक्षाज्ञारेभ्य ददार्थान्

रुपं भर्तुः आज्ञाद्यौर्जदेहिकोपकारकं दद्यात् । न तु स्पिट्कुलसमन्वितः । तदनुभवा  
तु तु त्वेऽपि । तथा च नारदः । मृते भर्त्यर्थपुण्ड्राया पतिपक्षः प्रसुः स्त्रियाः । विनि-  
वेगेषु रक्षासु भरक्षेषु स ईश्वरः । परिक्षीणे पतिकुले निर्मतुष्टे निराश्रये ।  
तत्पिण्डेषु चासत्यु पिण्डपक्षः प्रसुः स्त्रियाः ॥ इति सम्मुखमेव वचनार्थमादाय नाश्वेव  
स्त्रिया भर्त्यर्थिक्ये दानविक्रयाद्यधिकार इत्याङ्गः ।

तचेदं वाचम् । किंतस्य तथा क्वतेऽपि दानादौ तत्स्खृण्यानिव्यतिरेव । न  
तावदेवं युक्तम् । मन्त्रादिवचनैः सकलभर्त्यधनग्रहणे तस्या उक्ते सति तस्यास्तथ  
स्त्रावे दानादिस्खृण्यानिव्यतेर्बाधितत्वात् । अतएव जीमूतवाहनेनैव स्थावरस्य सम-  
स्तस्य । विभक्ता वाऽविभक्ता वा । स्थावरं दिपद्वैवेत्यादीनि स्थावरविषयात्मि दानादि-  
निवेदयचनान्युपव्यस्थाधर्मभागिताच्चापनार्थमेतानि दुर्वृत्तं पुरुषं प्रति कुटुम्बदुःखदा-  
नार्थमेव दानकियादिप्रवृत्तं प्रतिवेदकानि न तु दानादिस्खृण्यानिव्यतिप्रतिपाद-  
कानि । यथेष्वविनियोगार्हत्वाद्यक्षणस्त्रावे द्रव्यान्तरद्वय स्थावरेऽप्यविशेषाद्यनश्वेते-  
नापि वक्तुनोऽन्यथाकरणात्तथा तत्प्रतिपादनानुपपत्तेरिति निरूपितम् । तदुक्तदीत्या-  
त्रापि दुर्वृत्ततया दायादुःखदानार्थमेव भर्तुर्जिक्यदानादिप्रवृत्ताया अल्पं प्रतिवेद्या-  
तिक्षमादधर्मः । धर्मार्थन्दानप्रवृत्तायाः स्त्रीवनार्थर्थं विक्रयाधाने कुर्वन्त्यास्य  
नाश्वेवाधर्मेऽपि । न च मुक्तीतैवेति नियमादायादा ऊर्जमाप्नुयुरित्यभिधानाच  
दानाद्यनिधिकार एव तस्या अविभक्ताधनेहव तचेति वाचम् । साधारणस्त्रावयादि-  
भक्तधनेनासाधारणस्त्रावयस्य वैषम्यात् । न च स्त्रेगस्य प्राप्तवेनाविवेदयत्वाद-  
नादिप्रतिवेदार्थेव विधिक्षया चानधिकारस्त्रावागत एवेति वाचम् । वस्त्रव्यवहा-  
करणात्तेऽनिवयस्य द्रव्यादानादिना द्रव्यानाशनिवृत्यर्थर्थतयैवोपपत्तेरवश्वदाच्छत्वात् ।  
अन्यथाऽनिधिकारे दमदानरता पूजयेत्यप्यपूर्वाभ्युभित्यनेन दानविधिना विरोधेऽप्य-  
रिहार्थः । यत्र दायादाः पत्न्यनन्तराधिकारिणः प्रती दुष्टिर इत्यत्र निर्दिष्टात्ते  
गृहीयुः प्रागभावप्रधर्मसंयोः प्रतिबन्धकपत्न्यभावत्स्थाविशेषात्तदधिकारोद्भवादित्युक्त-  
न्तदतिस्थवीयः । दायादपदेन स्त्रीधनाधिकारियहये यथा वचनान्तरोक्तत्वात्  
पौगत्याः तथा तेषामपि काव्यायनेन वचनान्तरोक्तत्वात्पौगत्येऽविशेषात् ।

वस्तुतस्तु आतस्त्वे स्त्रामिनि मृते तत्प्रवासद्वानामेव तद्वयहयमुचितम् ।  
पत्न्यादिशब्दानां समन्वयस्त्वेन द्रव्यस्त्रामिले पत्न्या उपजाते पूर्वस्त्रामिदुहित्रादी-  
नादाः प्रसङ्गः । तेन यद्यपि पूर्वीभावः प्रागभावः प्रधर्मसंस्थावनाभावस्य प्रतिबन्धक-  
संसर्गाभाव उभयाभावस्य तुल्यतयापि यो द्रव्यस्त्रामी तस्मिन् मृते तत्प्रवित्ति पत्न्या-  
दिक्षमपुच्यस्य तस्य धनं लभेत्वेव वाक्यार्थः । अन्यथा दुहित्रादिभिरपूर्वपिण्डधने  
लभेत तन्मरणे तत्प्रतिक्षमेन तद्वनं पूर्वस्त्रामिनः पितु यैं पित्रादयस्त्रव लभेत्  
निति महाव्यवस्था प्रसव्यते । तस्माद्भूर्जिक्यं पत्न्या जन्मनासां भूतायां तद्वेगाव-  
शिक्षं मातुर्दुहितर इत्यादि वचनादुहित्रादियाद्यत्वेन प्रसत्तं दायादा ऊर्जमाप्नुयुरि-  
त्यनेनपेत्यते । अयत्र वस्त्रार्थः । दायादा इत्यत्र लासेवेदायां द्रव्यनान्वितमभर्तु-

रिवेनेपत्रिकात्तादनुष्ठयते । तथा चैवं वचनवक्तिः तस्या उर्जमभर्तुर्द्वायादा अविभक्त-  
तद्वाधिकारिणो विभक्तादधनमपि तत्पतीभोगावशिष्टं शृण्डीयुर्व पतीरिक्षवहरा-  
दुहिताद्य इति एवत्तापूर्वार्थताचतुर्थचरत्यार्थवस्तं भवति अन्यमते वचनान्तरो-  
कार्यानुवादमात्रमनर्थकं स्यात् ।

तस्याद्वद्वार्थं दाने दृष्टादृष्टावशकार्यार्थमाधौ विकाये चाल्येव पत्न्याः  
सकलभर्तुधनविषयोऽधिकारः वियमलु नटनर्तकादिदानानावशकाधिविक्रायनिहः  
चर्यं इति विज्ञम् । अतएव चाक्षेत्युक्तम् । इवं प्राप्नुवती वृथावश्यव्यक्तारिणी  
न भवेदित्यर्थः । दानधर्मस्यं महाभारतवचनन्तु सुतरामस्तुदुक्तमेवार्थमुपोद्घासयति ।  
तथा हि खोलां खपतिदायः खभर्तुरिक्षमुपभोगपतः । उपभोगो धर्मप्रत्यासद्वागो  
भोगो जलसद्वोगः यज्ञवेयोजनं वस्य तादृशः स्मृत उक्तो मन्वादिभिः । उत्तरादेव  
तदेव अवक्ति । क्षियः पतिवित्तादपहारं वृथावश्यं न कुर्यात् । कथव्येव नेत्रापहारस्य  
सर्ववैदान्येयस्तरतामाह । अपहारो हि चौर्यम् । नटनर्तकादौ वृथादानम् ।  
खपतिदायादिपरिधित्याद्वद्विभूतेवमाद्यपि संयताया अनौचित्वाद्वैर्यतुल्य-  
मित्यपहारशब्दोगैऽवः । धर्मार्थदानादिकन्तु न तथेति नापहारशब्देन वेधयितुं  
शृण्वते । तस्यात्मव्यं सुखम् ।

4. पत्न्या अपुचविभक्तासंक्षिप्तिस्यापतेवयवह्ये प्रथमाधिकारप्रतिपादका-  
न्यपरायणपि भूयांसि कृतिवचनानि । तत्र दृश्यतिः । चाक्षाये कृतितन्त्रे च लोका-  
चारे च द्विभिः । शरीरादेवं कृता जाया पुण्यापुण्यापते समा । यस्य नोपरता-  
भाव्यां देहादेवं तस्य जीवति । जीवत्वर्द्दर्शरोदेवं कथमन्यः समाप्नुयात् । सकुर्वैर्विद्य-  
मानैक्षु पित्रमात्रसनाभिभिः । अपुचस्य प्रमीतस्य पत्नी तद्वाग्द्वारिणीति ।

योगीन्द्रोऽपि पूर्वाभावे पराधिकारं वदन् सर्वप्रायस्येन पत्न्या एवाधिकार-  
मभिष्ठते ।

विष्णुरपि । अपुचस्य धनं पत्न्यभिगामि तदभावे दुहित्वागामि तदभावे पितॄ-  
गामि तदभावे मात्रगामि तदभावे आद्वागामि तदभावे आदपुचगामि तदभावे वन्धु-  
गामि तदभावे सकुर्व्यगामि तदभावे शिवगामि तदभावे सहाधाविगामि तदभावे  
ग्राण्डवधनवर्ज्ञं राजगामीति । वन्धुरच सपिष्ठः सकुर्व्यः सगोचः । वन्धुपदेश वश-  
मावपिद्वन्धादिग्रह्ये योगीन्द्रोत्तमविरोधापत्तेः ।

आत्मायनोऽपि । पत्नी पत्नुर्जनहरी या खादयनिचारिणी । तदभावे तु  
दुहिता यथगृहा भवेत्तदा ।

कृत्यन्तरमपि । अपुचस्याच त्रुण्डा पत्नी दुहितरोऽपि वा । तदभावे पितां  
माता भाता पुण्याच जीर्णिता इति ।

इतर्वचनैः सर्वतः पूर्वन्यली प्रतिधनमाग्नीति प्रतिपादितम् ।

5. एतद्विविद्वाच्यपि वचनानि कल्पन्ते । तथा च गारहः । आदृताम-  
पत्राः प्रेयात्मस्तिवेत्यवेत वा । विभवेत्यवगन्तस्य शेषात्मे शीधनं वित्ता । मरुत्यात्म

कुर्वीरन् स्त्रीबामाजीबनक्षयात् । रक्षका श्वाम्भर्तुचेदाच्छिक्षुरितरातु लिति । पत्नीलङ्घावेति भावृत्यान्वनयहश्वाम्भरस्य तत्पत्नीनामाह ।

मनुरपि । पिताहरेदपुच्चस्य रिक्षयं भातर एव चेति । पिण्डभाषो विक्ष्येना-पुच्चधनयहश्वाधिकारं वदति न तु पत्न्याः ।

अनपयस्य पुच्चस्य माता दायमवास्रुयात् । मातर्यपि च वृत्तायां पितुर्माताहरे-जनमिति च स्त्रिमाटपितामङ्गोरपुच्चधनाधिकारमभिदधाति ।

श्राव्यलिखितपैठीनसियमा अपि । अपुच्चस्य स्वर्यातस्य भाव्यात्मिदव्यक्तदमावे पितर्दौ हरेयाऽर्थं च्छेष्ठा वा पत्नीति भातुः पित्रोत्साभावे पञ्चधिकारं कथयन्ति ।

देवलोऽपि । ततो दायमपुच्चस्य विमज्जेयुः सहेदराः । तुल्या दुष्टिरो वापि विश्वमाणः पितापि वा । सर्वां भातरो माता भर्त्या चेति यथाक्रममिति । सर्व-पूर्वभावेन योगीश्वरेणाभिहितायाः पत्न्या भावाद्यमावेऽधिकारमाचष्टे । भावृत्य-माच भिन्नोदराः । सहेदराणां पृथगुपादानात् ।

कात्वायनोऽपि । विमक्ते संखिते द्रव्यं पुच्चामावे पिता हरेत् । भाता वा जननी वाय भाता वा तत्पत्नुः क्रमादिति । पित्रादिषु याहकोषु पत्न्या निर्देशमपि न करेति ।

6. एतेवामन्योन्यविवदानां वचनानाम्बारेश्वर इत्यं यवस्थामाह । विमक्ता-संहृष्टभातुरपुच्चस्य पत्नी यदि नियोगमङ्गीकुरते तदेव पतिधनं लभते । अवियोगा-र्थिन्यान्तु तस्यामविभक्तसंहृष्टपत्नीवद्वरणमाचेव वियोगाद्वैतापुच्चपत्न्याः पतिस्वा-पतेयस्याभिमतम् । न च वीजम् । अनेकस्मृतिभ्वपत्नीवद्वैतापत्न्याः पतिस्वा-पतेयस्याभिमतम् । पिण्डगोचर्विसम्बद्धा रिक्षम्भजेरन् स्त्री वानपयस्य वीजं वा लिप्स्तेति । अनपयस्य रिक्षम्भिण्डगोचर्विसम्बद्धा भजेरनतस्य स्त्री वा रिक्षम्भजेत् । यदि वीजं लिप्सेत । वा शब्दो यदिश्वद्वर्थोऽन्यथा रिक्षम्भहश्वावीजलिप्स्येयारतुल्यत्वेन विकल्पा-र्थसानुपत्तेः । तथा मनुरपि । धनं यो विभवाङ्गातुर्वतस्य स्त्रियमेव वा । द्वैतपयं भातुवत्याद्य दद्यात्तस्यैव तज्जनमिति विमक्ताधनसम्बन्धमप्यपत्नीवद्वैतापत्न्या एव यति । तथा विभागाभावेऽपि । कनीयान् ज्येष्ठभार्त्यायां पुच्चमुत्पादयेयदि । सम-स्त्री विभागः स्यादिति धर्मो अवस्थित इति वद्वप्यवदादा धनस्मवो नान्यथेति सिद्धम् । विश्वितोऽपि । रिक्षलोभाज्ञाक्ति नियोग इति रिक्षलोभप्रदृक्षं नियोगं प्रतिषेधक्षीकृत-तनियोगाया एव धनसम्बन्धोनेतरस्या इति स्पृष्टमेवाचष्टे । तथा च भावृत्यामप्रजा इत्यादीः । नारदादिवचनान्यनियोगार्थिनीविषयात्मि पर्वतस्याति । अपुच्चा वेषित-स्त्रीयाः भर्त्याः साधुदत्तयः । निर्बास्या अनिकारिण्यः प्रतिकूलात्मैव चेति योगी-श्वरोऽपुच्चामन्वादियेषिताम्भरस्यां भावमाणः पुच्चस्यैव धनसम्बन्धप्राधान्यात्मलृत एव तत्कृष्णां धनसम्बन्ध इति दूषयन्त्रायसाम्बाल्वर्णापत्नमूलकमेव स्त्रीयां रिक्ष-यस्त्रं आपवति । यत्तार्थं त्रिष्मुत्पत्तं तत्त्वानविज्ञानात्मु वे । अदिवदभावस्त्रे सर्वे

यासाक्षादनभाजना इति सूतिः पुरुषावामपि पुच्छादीनां यज्ञानधिक्षतानां रिक्षण-  
नधिकारं बदल्ली दण्डापूर्णायेन सुतरामभर्त्तकावान्तदनधिकारिणीनां धनसम्बन्धं  
निरस्ति । तथा स्मृत्वन्तरमपि । यज्ञार्थं विहितं वित्तं तस्मात्तद्विनियोजयेत् ।  
खानेषु धर्मयुक्तेषु न खीमूर्खविधर्मविति ख्यादिषु धनविनियोगमपि प्रतिषेधत्सा-  
क्षात्स्या एव छत्क्षधनयज्ञां सुदूरं दूवयतीति ।

7. तदिदं विज्ञानेश्वरादयेनानुमन्यन्ते । पलीहुहितर इत्यादिषु साक्षात्त्रिय-  
योगानुपादानात् प्रस्तावाभावाच । किञ्च नियोग एव पत्न्या रिक्षणसम्बन्धप्रयोजक-  
स्तदुत्पन्नमपव्यं वा । प्रथमेऽनुत्पादितपुच्छाया अपि खीकृतनियोगाया धनाधिकारः  
स्यात्रियोगोत्पन्नपुच्छ्य च न स्यात्रियोगमात्रेण भर्त्तधनस्यात् । द्वितीये बचनान्त-  
दैवतपव्यस्य धनसम्बन्धसिद्धेः पलीवचनमनर्थकम् । अथ खीणां पतिमात्रदारको  
धनसम्बन्धो न प्रकारान्तरेण । जीवति पत्न्यौ तद्वारको मृते त्वपत्नदारक इति वेध-  
नार्थं नियोगार्थिनीपलीपरं पलीवचनमितिमतम् । तदस्त् । अथर्वथावहनिकमि-  
त्यादि वस्थमाणवचनैरन्यथापि तासान्यनसम्बन्धबोधनात् । भर्तृ धने देवैव सम्बन्धो  
नियम्यत इति चेत् । तर्हि जीवति पत्न्यौ तद्वनसम्बन्धस्य पाणिग्रहणाङ्गि सहस्रमि-  
त्यादि गौतमवचनेनैव सिद्धेन्ते तु तस्मित्रियोगनिमित्तद्वनसम्बन्धं उच्चमानः क्षेत्र-  
जपुच्छस्यैवात्मो भवति सेऽपि प्रागुक्त इत्यपुच्छकरणे पलीवनार्थमेव ।

यच गौतमवचनं वीजं वा लिप्सेतेति यदि वीजं लिप्सेतेवर्थकतया नियोग-  
दारक एव धनसम्बन्धोपुच्छपत्न्या इत्यत्र प्रसाणिमित्युक्तं तदप्यथक्षतम् । वाशव्यस्य  
पक्षान्तरवाचिष्ठेन यद्यर्थाप्रतीतेः । धनयहणवीजलिप्सयोरतुल्यार्थतया विकल्पार्थं-  
कालासम्बवे निपातानामनेकार्थलाभ्यक्षतान्ययोपयोगी यद्यर्थं एव कल्पत इति  
चेत् न । वीजं वा लिप्सेत संयता वा भवेदिति प्रासङ्गिकधर्मान्तरोदेशरूप-  
तया विकल्पार्थकताया एव सम्भवत् । तथा च गौतमवचनसापि नियोगनिर-  
पेक्षमेव भर्त्तरिक्षयहणमुक्तम्भवति । किञ्च विधवानियोगस्य निषिद्धत्वादपुच्छाशयनं  
भर्तुः पाणयन्तीत्यादि मन्त्रादिवचनैः संयताया एव धनाधिकारप्रतिपादनात्रिवास्या  
अभिधारिण्य इत्यादिना भरत्वामात्रस्याप्यसंयतानामभावात्मृत्युभर्त्तरिक्षयहणं दूरा-  
पाक्षमेव ।

यद्याभिहितं धनं यो विभृयाद्भातुः । करीयान् व्येष्टभार्थ्याणां रिक्षलोभात्रात्ति  
नियोग इति मन्त्रादिवचनैर्विभक्ताविभक्तधनसम्बन्धोऽन्यवयतिरेकाभामपवदारक एव  
पत्न्या आयातीति । तदपि वार्तम् । अविभक्ते संख्यिति वा भर्तरि प्रते पुच्छदारक  
एव तस्याक्षणसम्बन्धेति । धनलोभेन नियोगो नाभ्युपेय इति । तत्तात्पर्यात् ।  
अतश्च । संख्यानान्तु यो भागः स तस्या नेत्र्यते दुधैरिति अभिधाय तत्स्त्रीणा-  
मनपत्न्यानाम्भवमात्रं नारदेन प्रतिपादितम् । न चैवं भावृत्यामप्रजाः प्रेयादित्वस्यापि  
संख्याविभक्तविवयते संख्यानान्तु भाग इत्यनेन पौनवक्तव्यं स्यादिति वाचम् । तदंश-  
ववरव्यपूर्णक खीधनाविभाज्यते तद्वरव्योरपूर्व्योर्विधानात् । यस्यपुच्छा वेगित-

चैवामिति योगीश्वरवचनं ततु खोवादीनां प्रकाशानामेवामिति सर्वनामा पराम-  
र्दीपतस्त्रोविषयमिति विभागानधिकारिनिःप्रपत्ताप्रक्षावे वस्ते ।

यदपि दिजातिधनस्य यज्ञार्थलालासदनधिकारिणा प्रमीतपतिकाया तद्यहुणम-  
नर्हमित्युक्तान्तदप्ययुक्तं । यज्ञशब्दस्य दानाद्युपकालात् तत्र च तस्या अथधिकारात् ।  
यथा चुते यज्ञमित्रदानहेतामादिव्यप्रविनियोगप्रसङ्गः । वल्लुतस्तु केवलधर्मार्थत्वमपि  
धनस्य नात्ति । धर्मर्थस्य कामस्य यथाशक्ति न हापयेत् । तथा पूर्वाङ्गमध्यन्दिना-  
पराक्षानपलाङ्ग कुर्याद्धर्मार्थकामेभ्य इवादिभिरर्थकामयेरपि तत्पात्रयोरावृत्यक-  
त्वात् । यज्ञार्थस्य इत्यस्य यदि स्यादिरण्यधारणस्य ऋत्यभिषारिहरणसम्बन्धेन  
ऋत्यर्थतैव स्यादिति पुरुषार्थत्वं यत्स्य स्यापितन्त्रैव विरुद्धेत । न स्त्री सातन्त्रमहं-  
सीवादि वचनात्पात्रतन्त्रमात्रमन्तु स्त्रियाः न तु धनयहये कोऽपि विरोधः । यज्ञार्थ-  
ऋत्यमुत्पद्मिति तु धर्मविनियोगप्रशंसार्थम् । अतएव स्यानेषु धर्मयुक्तेषु न स्त्रीमू-  
र्खविषयमिति वाक्यशेषः । मिताक्षराक्षतस्तु । यज्ञार्थं लक्ष्मदद्वासः काको-  
डपि वा भवेदिति दोषश्ववक्ष्य पुत्रादिव्यप्रविशेषेभ्य पिता यद्यज्ञार्थमर्जितं ततुत्रा-  
दिभिरपि तत्रैव विनियोग्यं नान्यत्रेवमप्रमेतदिक्षाङ्गः ।

8. ओकारादयस्तु । भार्याभरवमात्रपर्याप्तं यदि भर्तुधननदा सर्वमेव  
गृहाति । अतिरिक्तच्चेद आचारादय इति विषयवस्थामाङ्गः । छत्वमंशं जमेत  
चेतेतदपि तत्परमेव । वर्तनदानस्यावश्यकत्वात् । तेन सर्ववाक्यानामविरोध इति  
च तत्रोपपत्तिहृत्ययन्ति ।

वार्तमेतत् । सदृक्षुतधनपदस्य पल्लगेकाङ्गीवनपर्याप्तधनपरत्वं आचार्यपेक्षाच  
धनमात्रपदवलमिति तात्पर्यमेदस्य सति सारूप्यसम्बन्धेन्याव्यतात् । मनुष्यने छत्व-  
पदवेयर्थापातात् विच । सत्त्वपौरवेषु पुचेषु तत्वमांश्यश्च जीवद्वीविभागयो-  
द्वतः । यदि कुर्यात्समानंशान् पल्लगः कार्याः समांशिकाः । पितुरुद्धं विभजतां माता-  
प्यांशं समं इरेत् । इवाभ्यां वचनाभासम् । असत्सु पुचेषु पल्ली भरवमात्रं जमेत इति  
महान् आमोहः । तत्रापि जीवनपर्याप्तमेवांशशब्देन विवक्षितमिति चेत्त । अंशशब्द-  
समशब्दयोरानर्थकाप्रसङ्गात् । इते तर्जन्यकार्ययेदिव्यापि जीवनेपर्याप्तपरवाच-  
श्चमात्रे सर्वथार्द्दपदार्थलागापत्तेच । अत्यधने पुचसमांशं वज्रधने जीवनेपर्याप्त-  
मात्रं विवक्षितमिति तु विद्विवेष्यापत्तेऽत्ययुक्तम् । तथाहि । सामेव समांशशब्दौ  
वाक्यानामपेक्ष वज्रधने जीवनमात्रपर्याप्तधनपरतौ जहाचित् । अत्यधने तु यथा  
अनुर्ध्वाविवेष्यापित्तौ वाक्यार्थमेवेदेन वाक्यमेवापत्तेऽत्ययुक्तम् । युगप्तहत्तिण्डाका-  
दपिहयापातत्त ।

यथा आतुर्मात्राप्रपत्ते इवोः प्रवयन्तीति वाक्येन पर्याप्तिकावा सौमित्रप्रवय-  
नातिदेश उत्तरवेदिसुप्रिकरणि न सुनालीरीय इत्युत्तरवेदिप्रतिवेषेऽप्राप्तस्य प्रतिवेष-  
धायोगजेनुभेनेत्तरोक्तान्तीकरदेशिणा नातिदेशप्राप्तायाः सौमित्रोत्तरवेदेतर्व प्रतिवेषः  
किञ्चूपाच वप्तीति प्राकरविषयवचनप्राप्ताया इत्युपन्थस्ते प्राकरविषयं वचनं प्रथ-

भीत्तमयोः पर्वतोः प्रतिबेधमपेत्तु पाञ्चिकीं प्राप्तिं मध्यमयेत्तु निष्प्रतिपक्षमेवा-  
पाञ्चिकीसुत्तरवेदे: प्राप्तिं करोतीति विधिवैष्वम्यप्रसङ्गेन पूर्वपक्षिणा तत्त्वते दूषिते  
परमसिद्धान्तिना पूर्वपक्षुक्षविधिवैष्वम्यभयादेव प्रथमेत्तमयोः पर्वतोरपाप्रतिवेधा-  
वोगाम्ब वैष्णवेव इत्यन्यं नित्यागुवाहः उपाच वपनीति तु इयोः प्रश्नवन्तीत्याद्यर्थवाद-  
सहजातं मध्यमयेत्तरेव वरद्वप्रधाससकामेधपर्वतोरत्तरवेदिं विधत्ते न तु वचना-  
तिदेशोऽयमिति प्रतिपादितम् ।

9. अत अचिदाह आद्वामपुच्छनयाहित्यं भरण्यं ज्ञात्य कुर्वीरन् खीणा-  
माजीवनक्षयादिति भरणोपयुक्तधनदानश्च तत्स्वीकामुक्तं । यदा भरणमाजोपयुक्तमेवा-  
पुच्छनं ततोऽपि न्यन्तं वा । तदापि किं भातर एव गृह्णन्ति पली वेतिविरोधे पलगा  
एव धनयद्वयं पलीदृष्टिर इत्यादिना पूर्वपलीखलज्ञापनयोच्चत इति ।

तदपि मन्दम् । पूर्वोक्तविधिवैष्वम्यस्याचापि तादवस्थात् । धनभागिति पदं  
वाक्यान्तरमपेक्षात्यधने जीवनमाचपर्याप्तधनभाक्तं पलीविषये वदति पित्रादिषु तु  
सकलधनभाक्तमिति ।

10. कथन्तर्हि विरोधपरिहार इति चेत् । इद्यु । पिता हरेदित्यादिषु  
क्रमपतीतेरपुच्छनयद्वाधिकारमाचप्रदर्शकानि तानि । येगीश्वरवचसि त्वेषाम-  
भावे पूर्वस्य धनभागुपरोत्तर इति क्रमपरत्वात्पलगादिग्रन्थस्य निबुद्धमस्याभावेऽपि  
तेवामर्थाविरोधात्पलगाद्यभावे पित्रादयेऽपुच्छनयाहित्य इति ।

शङ्कितस्यभिचारादावात्तु पलगः हारीतेन धनयद्वयं निषिद्धम् । विधवा यौव-  
नस्या चेन्नारी भवति कर्कशा । आयुषः क्षयगार्थं तु दातव्यज्ञीवनन्तरेति ॥ अस्तादेव  
वचनादनाशङ्कितस्यभिचारादायाः सकलमर्हधनयद्वयस्तेते । अतएव शङ्कुवचने ज्येष्ठा  
वा पलीयुक्तं ज्येष्ठा गुणैः प्रशंस्या । न तु वयोव्येष्ठा । मननापि वर्णकमेवा ज्येष्ठं  
कथितम् । यदाह । यदि सात्त्वं पराचैव विन्द्रेन् योषितो द्विजाः । तासां वर्णकमे-  
त्वैव ज्येष्ठं पूजा च वेष्टम् चेति ॥ अतः परिग्रहनवयोर्भावं कनिष्ठापि सर्वर्णवासवर्णा-  
तोज्येष्ठा सर्वर्णास्यपि गुणवती ॥ तथा च मनुः । भर्तुः शरीरशुशूरां धर्मकार्यस्य  
नैत्यकम् । खा चैव कुर्यात्सर्वेषांगासाजातिः कथस्तु यस्तु तत्त्वारयेऽप्यहात् सजावा  
स्त्रियाऽन्वया । यथा ब्राह्मणाचारद्वालः पूर्वदृष्टुलघैव सः ॥ येगीश्वरेऽपि । सर्वर्णसु  
विधौ ज्येष्ठया न विनेतरा । तथा च यज्ञसयोगात्पलीशब्देनापि सैवोच्चते ॥  
सर्वर्णाद्य अभावे तु याऽन्तरवर्णां सैव । तथा च विष्णुः । सर्वर्णाभावे त्वनन्तरैवापदि-  
नत्वै द्विजः शूक्रया धर्मकार्यमिति । अत तुर्यादित्यनुवर्तते । तथा च ब्राह्मणस्य  
ब्राह्मण्यभावे क्षत्रियैवापदि न तु वैष्णवश्च परिश्चिते अपि । क्षत्रियस्य क्षत्रियाद्य  
अभावे वैष्णवै । वैष्णवस्यानन्तरापि शूक्रा न किञ्चु सैव । शूक्रायाः सर्वथा निषेधात् ।

तथा चानाशङ्कितस्यभिचारा वर्णकमेवा भर्तुधनशूद्धीत्यान्त्याः सपलीः परिपा-  
कयेत् । वयुःसाहस्रसु यथा सं विभव्य गृह्णीयुः । अतः पलीवेष्टवचनं जात्वभि-  
प्रायेव ।

तस्मादपुच्छस्यासंख्टिनो विभक्तस्य प्रभीतस्य साध्वी भाव्या छत्कधनाद्विकारिणी  
चविभक्तसंख्टिनोरपुच्येः साध्वाप्यभरवमात्रं भाव्यामप्रजा इत्वादि नारदादि  
वचनाङ्गमते । अभिचारिणी तु भरवमपि न । आच्छिष्ठुरितरात्मिकभिधनात् ।

यत् अभिचारिणीनामप्यश्वगवसनदानमुक्तम् । एवमेवंविधं कुर्व्याद्योषित्युपति-  
ताखपि । वस्त्राङ्गमासां देयन्तु वस्त्रेयुच्च ऋद्धनिके हति । तत् । इताधिकारा-  
म्बिज्ञानं पिण्डमात्रेऽपजीविनीम् । परिभूतामधःश्वां वासयेद्याभिचारिणीमिति ।  
भर्तारं प्रकृत्य येगीन्द्रियाभिधानात्तदविसंवादेन भर्तविषयकम् । तदपि प्रायच्चि-  
त्तावधि । अब्दोद्यत्यात्तद्वर्ष्णमीनां त्वनेनापि निष्कासनमित्यादिप्रायच्चित्तप्रकारे  
विवेश्यामः ।

पलीदुहितर इत्यस्य विभक्तसंख्टिविषयत्वं । विभागस्य पूर्वमुक्तात्मात् संख्टि-  
विभागस्य च सर्वापवादेनाये वज्ञमात्रालादर्थाद्यविषयत्वं इति विज्ञानेन्द्रज्ञानीधर-  
स्मृतिचक्रिकाकारविश्वरूपमेधातिथिमदनरक्षणारादीनां भूयसां संमतम् ।

11. अपुचपदं पलीबादिषु अथमात्रं पौचप्रपौचाभावोपलक्षणम् । प्रपौच-  
पर्यन्ताभाव एव पलगा धनयहयाऽचिकारात्मुच्यपौचे र्जग्ं देयमिति वचने पौचस्यापि  
ऋद्धानेऽधिकाराभिधानाद्विकारप्राह्वानात्तदस्त्वे ऋकथयाह ऋक्यन्दाप्य इति वचनात्  
तस्यैवर्गदानाधिकारे सत्वपि पौचे तं प्रति तद्विधानासम्भवाद्वोचजत्वादिना ऋक्थ-  
यहये रिक्षयाह इत्येतेनैव तस्यापि तत्त्विद्वैवर्यर्थं पौचविधेरतः पौचेणा पितामह  
ऋक्षायहयेऽपि पुच्चवद्वज्ञन्देऽमित्युक्ते दण्डापूपिकथा सति तद्विक्षेऽन्यस्य तद्यहया-  
धिकारो दूरनिरस्तः । एव एव प्रपौचेऽपि न्यायः । अतएव प्रपौचसंग्रहार्थं पुच-  
पौचयोरिति वज्ञवचनमितरथा द्विवचनं श्वस्यभिप्रायकं वज्ञवचनमिति वा कर्त्यं  
स्यात् । एव त्वायमर्थः । पुच्च पौच्चस्य पुच्चस्य पौचः पुच्चप्रौचः सत्तेति वक्षीतत्पुच्चोत्त-  
रमाणतपुच्चपौचपदे पुच्च पौच्च तावितिन्द्रे पुच्चपौचौ च पुच्चपौच्चत्तेति इन्द्र-  
तत्पुच्चरूपपुच्चपौचपदे सरूपैकाशेषे वज्ञवचनोपयत्तिः । पुच्चपौचप्रपौचैरिति यावत्  
पौचपदं प्रपौचोपलक्षणं वा । पुच्चापेक्षया पौचस्य तद्येष्वया प्रपौचस्य कृद्वदाने  
विशेषप्रकारविधिरथत एव सङ्गच्छते । अन्यथा प्रपौचे विशिष्टविधिक्षयनापत्तिः ।

चयाकानुस्त्रोपकारित्वं पार्वतविधिना पिण्डदानेन स्पृष्टम् । तथा च मनः ।  
चयाकामुदकद्वार्थमित्यु पिण्डः प्रवर्तते । चतुर्थः संप्रदातैर्यां पञ्चमो नोपपद्यते ।  
वौधायनोऽपि पुच्चपौचप्रपौचानुक्त्याह प्रपितामहः पितास्यं सौदर्या  
भातरः सर्वर्णायाः पुचः पौचः प्रपौच इतानविभक्तदायादाग् सपिण्डानाचक्षते । वि-  
भक्तदायादात्म्वं सकुस्त्यानाचक्षते । रात्रवङ्गजेषु तद्वामी द्व्यर्थो भवतीति । अस्यार्थः ।  
पिण्डादिपिण्डवेषु सपिण्डनेन भोक्त्रालात्मादिभिलात्पिण्डस्यैव दानात् । ये हि  
जीवन् यत्पिण्डदाता स वृतः सन् सपिण्डनेन तत्पिण्डभोक्ता । एवं मध्यस्थितः पुरुषो  
जीवन् पूर्वेषां पिण्डदाता वृत्तव्यत्पिण्डभोक्ता परेषाङ्गीवतां पिण्डसंप्रदानं वृत्तैः  
तैः सह दौहित्रादिदेशपिण्डभोक्ता अतो येथामयं पिण्डदाता ये वा तद्यस्पिण्ड-

मोक्षारलेऽविभक्तं पिण्डरूपे दायमन्ननीयविभक्तदायादः सपिण्डा एवपिण्डसमन्वात् पञ्चमस्य तु पूर्वस्य मध्यमः पञ्चमो न पिण्डदाता न च तत्पिण्डभोक्ता एवमध्यत्तेऽपि पञ्चमो मध्यमस्य न पिण्डदाता नापि तद्वोक्ता । एतेन वद्धप्रपितामहात् प्रभृति पूर्वपुरुषात्मयः प्रतिप्रणामप्रभृत्यध्यत्तनपुरुषात्मय एवपिण्डभोक्त्वाभावादिभक्तदायादः पञ्चमप्रभृतय उभयतः सकुल्या इत्याचक्षते मुनिः कुलमाधसमन्वात् ।

इदं सपिण्डत्वं सकुल्यत्वं दाययह्योपयोगित्वेनोक्तं तत्प्रकरणपाठात् । अशौचविवाहार्थर्थन् पिण्डलेपसुजामपि । लेपभाजस्तुर्धायाः पित्रायाः पिण्डभागिनः । पिण्डः सप्तमस्तेषां सापिण्डं साप्तपौरुषमिति स्मरणात् । सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तत इति च । पञ्चमात् सप्तमादूङ्कं माटतः पितृतत्त्वयेति । योगीश्वरवाक्यैवाक्षवाक्षवत्यथा सप्तमे पुरुषे स्थित्वाऽऽथमे विनिवर्त्तत वा इति आख्येयम् । तेन यथापचारान्तर्मुखी ख्रीणानिवपुरुषं विज्ञाय तदत्या शौचप्रकरणपठितं तन्मात्रोपयोगित्विपुरुषं सापिण्डं तथेदं विभागमात्रोपयोगीति ध्येयम् ।

काव्यायनस्तु स्पृश्येव पुच्चपौच्छपौच्चाणां धनयह्यमाह । अविभक्ते न्द्रेते पुच्चे तत्पुत्रं रिक्षभागिनम् । कुर्वीत जीवनं येन लक्ष्यं नैव पितामहात् । लभेतांशं सपिण्डन्तु पिण्डशात्स्य वा सुतात् । स एवांश्चतु सर्वेषां भादृणां च्याथतो भवेत् । लभेत तत्पुत्रो वापि निवृत्तिः परतो भवेत् ॥ इति प्रपौत्रानन्तरमुक्तो यः प्रणामप्रभृत्यवनधिकारः स सपिण्डत्वेन त्वर्त्येव यथाप्रत्यासन्ति ।

भादृणामेकाजातानामित्रादि तु दायातिरिक्तश्राद्धादिपूत्रकार्यकारित्वपरं भादृपुरुषस्य पुच्चीकरणसम्भवे नान्यः पुच्चीकरणीय इति नियमार्थम् । अन्यथा भादृपुरुषस्य भात्रनन्तरमभिधानमपुच्चिक्षिहार्यमिभायके वाक्ये क्रमपरे न सङ्गच्छेते ।

पुच्चादीनामव्यायामित्रादित्तिकमहोपकारणकारित्वात् पुच्चादिभिर्गृहीतं धनं स्वामिन एवोपकारकमुपकारप्रव्यासत्वा तदीयमेव । उपकारप्रव्यासचिच्छाभर्हिता । यथाह । ज्येष्ठेन जातमात्रेण पुच्ची भवति मानवः । पिण्डशामद्वयस्त्वेव स तस्माक्षम्बुभर्हिति । तस्मादिति हेतुत्वेनोपकारित्वस्योपन्यासाहायमागप्रकरणे धनस्त्राम्पकारकत्वातिशयो यत्र स्थितस्य तद्वनस्य भवति स एव तद्वनग्राहीति प्रव्यासस्तिरौत्तर्गिंच्चभर्हिता चेति दृच्छितम् ।

पुच्चादीनां महोपकारकत्वानेकाश्रुतिस्मृतिपुराणादिप्रसिद्धम् । तत्र श्रुतिर्दृच्छन्नोपास्त्वाने वङ्गूष्ठप्राप्तये । यं त्विमं पुच्चमिच्छन्ति ये विजानन्ति ये च न । किंसित् पुच्चेण विन्देत तन्मात्रस्य नारदेति । गाथया श्रिरिच्छन्देण एषो नारदो दद्यमिर्गायामिः पुच्चमाहात्मपरामिः प्रवेशितवानित्युक्तम् स एकाया एषो इश्वरिः प्रत्युवाच ऋष्यमस्तिन् सङ्गयत्वमृततत्वस्य गच्छति । पिता पुच्चस्य जातस्य पश्येच्चजीवतो-सुखमित्रादिना । स्मृतयस्य । मनुविष्णू । पुनाज्ञो गत्कायस्त्रात्पितरन्त्वावते सुतः । तस्मात् पुच्च इति प्रोक्तः स्वयमेव स्वयम्भुवा ॥ शङ्खलिखितौ । पिण्डशामद्वयो जीवन्दृढ़ा पुच्चसुखमिता । स्वर्णी सुतेन जातेन तस्मिन् संबन्धस्य तद्वनम् । अपिहेत्वाया वेदा

यक्षाचैव सदक्षिणाः । ज्येष्ठपुच्चप्रसूतस्य काळा गार्हन्ति धोड्शीम् ॥ मनुजिखित-  
वग्निहृषारीताः । पूच्चेजा लोकान् यथति पौच्चेजानन्यमन्त्रुते । अथ पुच्चस्य पौच्चेजा  
ब्रह्मस्याम्रोति पिष्टपम् ॥ याज्ञवल्क्यः । लोकानन्यन्दिवः प्राप्तिः पुच्चपौच्चप्रपौच्चकैः ।  
यस्मात्समात् स्त्रियः सेव्याः कर्त्तव्याच्च सुरक्षिता इति ॥ पुराणादिवु तूपाख्यानानि  
पुच्चादिप्रशंसाण्सीनि बहूनि ।

तस्मात् प्रपौच्चपर्यन्ताभावे विभक्तासंख्यपतिरिक्ष्यहारिगी पलीति सिङ्गम् ।

12. अथ जोमतवाहनः दृहस्यतिविरोधाद्येवं व्यवस्था यदाह । विभक्ता  
भातरो ये च संप्रीत्यैकच संस्थिताः । मुनर्विभागकरणे तेषां ज्येष्ठां न विद्यते ।  
यदा कस्त्रियमीयेत प्रव्रजेद्वा कथम्भवन । न लुप्यते तस्य भागः सोदर्थस्य विधीयते ।  
या तस्य भगिनी सा तु ततोऽशं लक्ष्यमर्हति । अनपवस्य धर्मोऽयमभार्यापिटकस्य  
च । संख्यानान्तु यः कस्त्रिदिव्याशैर्यादिना धनम् । प्राप्नोति तस्य दात्रो हांशः  
शेषाः समांश्चिन इति ॥ अत्रोपक्रमोपसंहारयोः संख्यत्वकीर्तनात् तत्सन्ध्यपतितम्  
लुप्यते तस्य भागः सोदर्थस्य विधीयत इति वचनं संख्यविषयमवश्यं वाचनाच  
चानपवस्य धर्मोऽयमभार्यापिटकस्य चेत्यभिधानात्पुच्छुहितपलोपिटुखामभावे संख्य-  
सोदराधिकारः प्रतीयत इति कथमस्य पलीबाधकत्वम् । किञ्च न लुप्यत इति  
संख्याविभक्ताचक्षतरीयव्यवस्थ्य मिश्रीभूतस्य लोपाशङ्कायामुपयद्यते । विभक्तासंख्य-  
धने तु विमक्ते का लोपशङ्का तस्मात्संख्यविषयमेवामीवां षिङ्गादपि ।

किञ्च । पलीतः पूर्वं भात्रधिकारबोधकशङ्कादिवचनानां संख्याविभक्तविव-  
यत्वं विस्पृश्वचनान्तराद्यायादा प्रवलादुच्यते । नाद्यः विस्पृश्विशेषवचनाभावात् ।  
संदृष्टिन्तु संख्यौत्तमादि वक्ष्यमाववचनान्तु भात्रधिकारावसरे विशेषकथनं नामुमर्थ-  
मवगमयति । दृहस्यतिवचनान्तु पुच्चादिपिट्यपर्यन्ताभावे संख्यसोदराधिकारबोधकं  
प्रश्युतासंख्यविषयकात्मेवावगमयति । न द्वितीयः । न्यायेद्यायं वाच्यः । अविभाग-  
संसर्गयोर्यदेवकस्य धनं तदेवापरस्यापोति मृतस्य तत्र खलेऽप्यतेऽपि जीवतत्त्वत्वात्त-  
द्वामिता युक्ता न खाम्यन्तरकल्पयनेति । न चासौ युक्ताः । अविभागसंसर्गवतामय-  
विज्ञातैकादेश्वरस्थितिप्रतिनियतामयमेव खल्वं गत्वैकज्ञ सर्वेषां गापि समये  
अनेकाखलोत्पादविनाशकाल्पनाप्रसङ्गात् ।

किञ्च । पाणियद्वयाङ्गि संख्यमित्यादिग्राम्लिखितगौतमादिवचनेभः पलीगः  
परिवायादुत्प्रस्त्रियतिथने सत्त्वमविभक्तासंख्यमरणे नश्यत्वच च न नश्यतीति  
कथ्यनायामावाभावः । पुच्चादिवु सत्त्व तदधिकारशास्त्रवकादेव पलीखलनाशः  
कथ्यते । अत्रापि संख्याविभक्ताचक्षतराधिकारशास्त्रात्माशः कल्पयत इति चेत् ।  
अन्यस्य तादृशाक्षसादर्थनात् । अस्य चेतरथा अन्योन्यामयप्रसङ्गादसिङ्गेः ।  
सिङ्गे हि संख्याविभक्तमरणे पलीखलनाशे भात्रधिकारशास्त्रस्य तदिविषय-  
कल्पम् । सिङ्गे च तस्मिन् पलीखलनाशकथ्यनेति । अतएव योगीश्वरविषयादिव-  
चने पुच्चराहित्वमेवेपात्तं न तु विभक्तासंख्यत्वे । विभागस्योक्त्वासंख्यां दिग्नाच

वक्षभागत्वादर्थादुपासे एवेति चेत्। तर्हि मुखगौणं पुच्छे रिक्षप्राहितयोक्तेषु तदितरविषयतमप्यर्थात्तिङ्गतीत्वपुच्छत्वमपि नैषादेयम्। अपुच्छत्वैत एवानेनैव ग्रन्थेणेति नियमार्थतया तत्पुर्थकमन्ययोरपि तुल्यम्। विभागोक्तपर्यन्वसानन् न जातमेव। संख्यिवचनं भावधिकारावसरे विधानार्थज्ञ पब्लगायपवादार्थमियुक्तमेव।

किञ्च। शृङ्खलिखितादिवचनानामविभक्तसंख्याभावपरत्वे तादृशस्यापुच्छस्य धनन्तदिक्षभावगामि तदभावे पितरौ हरेतामित्वस्य कोऽर्थः। तदा च विकल्पनीयम्। किं विभक्तासंख्यौ पितरौ गृहीयतामिति। उताविभक्तासंख्याविति।

तत्र न प्रथमः कल्प्यः। तादृशयोः पित्रोः पलीवायत्वात्तदं भावभावे पलीतः पूर्वन्तयोरधिकारबोधः। नापि द्वितीयः। अविभक्तासंख्यापितृप्राप्त्याद्यत्वे सर्वेषामविवादाद्वचनवैयर्थ्यात्। अपि च। यथा पित्रा भावा च विभक्तासंख्याधने श्वरोरदाढतया आत्मा वै जायते पुत्रः यथैवात्मा तथा सुत इत्येकात्मसृतेर्द्वन्दवेहोत्याच्च पौत्रयोः पिंतुः प्रभुत्वात्तत्पिट्ठैर्यपितामहप्रपितामहपिण्डयोर्द्वये सपिण्डनेन मृतस्य पुच्छस्य भोक्तृत्वाज्जीवति च पितरि पुत्राणां पार्वत्यपिण्डदानाभावाद्भावद्वयः पर्वत्यभित्रोरधिकारस्तथेतरत्वापि युक्तः। अविभागसंसर्गयोरविशेषाद्वा तुल्याधिकारो युक्तो न तु भावभावे पितुरिति।

किञ्च। पित्रोरविभक्तासंख्येवशेषणमनुपयज्ञं मात्रा सह विभागभावेनाविभक्तविशेषणानर्थक्यात्। अतएव संसर्गभावोऽपि। विभागपूर्वकत्वात्तस्य। यथाह रुहस्तिः। विभक्तो यः पुनः पित्रा भावा चैकच संस्थितः। पिट्ठैवेषाथवा प्रीत्या स तत्पुर्वुष उच्चत इति॥ एतेन येषामेव हि पित्रभावपिट्ठवाणां पिट्ठपितामहार्जितदव्येषाविभक्तत्वमुत्पत्तिः सम्भवति तएव विभक्ताः सन्तः परस्परप्रीत्या पर्वत्विभागध्वंसेन यत्तव धनन्तरमम यत्व मम तत्त्वेत्यभिन्नतयैकपाकेन पर्वत्वेदेकाग्रहितया स्थिताः संख्यन्ते। न पुनरनेवम्भूता द्रव्यसंसर्गमात्रेण विजामपि सम्भयसमुत्पादे संख्यत्ववहारपत्तेः। प्रीतिपूर्वोक्ताभिसन्धिरहितानां सौकर्यादिवशाद्भ्रात्यमिश्रणेन अवहारादिकुर्वतां भावादीनामप्यतएव न संख्यिववहारः। तस्मान् मालगतो आवद्वावाधिकारविरोधो दुःसमाधः।

अतः प्रपौत्रपर्यन्ताभाव एवाविशेषेषापुच्छप्रमीतभर्तुधने समस्तेऽधिकारिणो पलीवेव रमणोयम्। नर्तश्रुतासंख्याविभक्तगोचरत्वकस्यना। जितेन्द्रियादयोऽप्येवमाङ्गः। प्रपौत्रपर्यन्ताभावे तस्या अपि भर्तुः आद्वादिनोपकारकत्वातिशयात्। यत्थेव दद्यात्तपिण्डं छात्वमर्घं इरेत चेति मनुवचनादिभ्यः। आसेऽपि। मृते भर्तुर्ति साध्वी खी ब्रह्मचर्ये व्यवस्थिता। खाता प्रतिदिनमभक्त्या भर्त्रै दद्याज्ञालाङ्गलीन्। कुर्याचालुदिनमभक्त्या देवतालिथिपूजनम्। विश्वोराराधनस्त्रैव कुर्याज्ञियमनुव्रता। दानानि विप्रसुखेभ्यो दद्यात् पुण्यविद्वद्ये। उपवासांश्च विविधान् कुर्याज्ञालोदितान् मुभेऽपि। लोकान्तरस्त्वमर्त्तारमामानश्च वरानने। तारयत्युभयं गारी निर्बन्धमपरायेवादि। तस्मात्पत्त्वा अपि पतिगरजनिजारस्त्वाद्वाहीनतया आज्ञालै

पूर्वमी स्त्रीयापुण्येनार्जूनरीरसंख्यात्पत्त्वर्जं शरीरस्य यस्य भार्या सुराम्बिवेदिकादि-  
लिङ्गदर्शनात्पतिमपि पातयेदिति तथा इहीतं स्वाध्यर्थमेव तद्वनं भवतीति सर्वेभ्यो-  
ज्ञेभ्यः पूर्वं पत्न्या एव पतिधनयह्यं युक्तम् ।

शङ्खादिवचने तु अवहितयोजना कार्या । अपुत्रस्य पुत्रपौत्रप्रपौत्रद्वितस्य  
स्वर्णात्पत्त्वं धनं च्येष्टा प्रशस्तमा पत्नी जमते । तदभावे दुष्टिदौषित्रयोज्ञाभावे  
पितरौ लभेवातान्तदभावे भावगामीति । तदभाव इति मध्यपठितं पूर्वोत्तराभ्याम-  
विरोधाद्यायस्य पूर्वमुक्तत्वाच सम्भवते । भावुगामप्रजाः प्रेयादिकादीनि नारदादि-  
वचनान्यपत्नीरूपपरिणीतस्त्रीविषयाणि । स्त्रीशब्दमात्रोपादानात्तत्र । अत्र च  
पत्नीशब्दोपादानात् । परिणीतानामपि चापत्नीत्वं प्राक् प्रपञ्चितम् । अतएव नारदस्यैव  
वचनान्तरे । अन्यत्र ब्राह्मणात्मिन्तु राजा धर्मपरायणः । तत्स्त्रीणां जीवनं दद्यादेव  
दायविधिः स्मृत इति ॥ स्त्रीशब्दश्रवणादपत्नीनामब्राह्मणस्त्रीणां वर्तनदानमाह ।  
पत्नीनान्तव्राह्मणस्त्रीणामपि ज्ञात्वभर्तृधनाधिकारमाह । इहस्तिः । येऽपुत्राः  
क्षत्रियद्वृद्धाः पत्नीभावद्विवर्जिताः । तेषां धनं इहेदाजा सर्वस्याधिपतिर्हि सः ॥  
पत्नीभावद्विवर्जिता इति सत्राचारादिपर्यन्ताभावोपलक्षकम् । तेषां बद्धमत्वाभ्यु-  
राज्ञोऽनुप्रवेशात् । प्रदर्शितविष्णुवचने सहाय्यायिपर्यन्तानभिधाय तदभावे ब्राह्मण-  
धनवर्जं राजगामीति कथनात्तेति तत्वं विविन्तिस्म ।

13. तत्रेदमालोचनीयं । नारदशङ्खादिवचनानामविभक्तसंख्यिविषयत्वेन  
या अवस्था तत्र न्यायविरोधो वा दूषणं वचनविरोधो वा । न तावद्व्यायविरोधः ।  
वाधकन्यायस्याभावात् । प्रत्युत साधको न्यायोऽुल्लिप्तिः । तथाहि अविभक्तप्रमीते ताव-  
स्त्राणांश्च एव नाभूत्तिमिवं इहातु संख्ये जातोऽयंशः पुनः साधारणस्त्रत्वात्पत्त्वाप-  
गतः । न च साधारणस्त्रत्वात्प्रयोऽयविविक्षण्ड्वागोऽस्येवेति वाच्यम् । अलु तावतापि  
यत्प्रतियोगिकं साधारणं स्त्रत्वात्पगमे विद्यमानस्त्रत्वकः संक्रम एवेचितोत्तरव्य-  
स्त्रत्वोत्पत्तिकल्पना । पाणियह्यादि सहस्रशङ्खम्भुषु तत्पलेषु ब्रह्मपरिष्ठेषु चेति  
गौतमवचनात्पत्तग्रा अपि तद्वागेऽविविक्षण्डपि स्त्रत्वमुत्पन्नं तत्पाशः किमिति तत्स्त्रत्वे  
कल्पयत इति चेत्त्र औपपत्तिकोऽुल्लिप्ति न तु तात्त्विकाः । पत्नग्राः पतित्रये स्त्रत्वं क्षीरनीरव-  
देकलीलीभावापत्तं सहाधिकारिकम्भेष्येति न तु भावुगामिव परस्परम् । तत एव  
तेषां विभागो न तु जायापत्तोः । एतद्व्यायमूलकमेव जायापत्तेन विभागोविद्यत इति  
वचनम् । तथा च पत्न्यः स्त्रत्वापगमे तस्याः स्त्रत्वापगमस्त्रत्वावद्यकाः । एवस्त्राविभक्त-  
संख्यिपतिस्त्रापत्तेये पत्नग्राः स्त्रत्वापत्तिः कल्पयतामविभक्तसंख्यिविषयस्य सतो-  
ऽुलाधारणं वेति वीक्षायामुत्तरपक्षकालीकरणमेवेचितं जाधवात् । न च पत्नेष्व  
विभागप्रतियोगिनी । प्रापकप्रमाणाभावात् । न चैतान्येव वचनानि प्रापकानि । तेषां  
विषयविवादादिभक्तासंख्यिविषयत्वेनाप्यपत्तोः । अतएवान्याशयोऽपि द्वीयान् ।  
विमर्शदशायानादप्रसङ्गात् । सति विमर्शे तद्विषयत्वनिष्ठयादेव ।

अविभागसंसर्ववतामपीत्वादि च यदुक्तानामस्त्रत्वात्पत्तिक्रमम् । प्रतिनिः-

ताविविक्षणस्त्रीकारेऽपि संख्याविषयताया न्यायान्तरसिद्धित्वात् । नचात्रुतविभ-  
क्षासंख्यविषयत्वं प्रजावादिवाक्यानामप्रमाणकम् विद्वनारददिव्यधनानां व्यवस्था-  
न्तरासम्बवे पूर्वोपपादितन्यायोपशुभार्यापत्तेरेव प्रमाणत्वात् । अवस्थान्तरासम्बवस्थ  
वक्षामः ।

न च यथाविभागस्योक्तत्वात्संख्यिनाख्य वक्षमाणत्वादर्थाद्विभक्षासंख्यिभव-  
परत्वं पलीबादिरायातीति तदनुपादानन्तरा मुख्यगौणपुच्छविभागमुक्ता पलीबादि-  
वचनारम्भादपुच्छधनविषयत्वमपि सिद्धति तेषामित्यपुच्छस्येत्यपि न वाच्यमिति वाच्यम् ।  
एक एवौरसः पुच्छः न भातरो न पितरौ पुच्छा रिक्ष्यहराः पितुरिक्ष्यस्यार्थस्य स्फूर्त्य-  
न्तरोक्तस्य योगीश्वरेका वचनान्तरेकानुक्तेक्षदवेष्टनार्थत्वात् । अन्यथा जीवदजीव-  
विभागयोः कल्पयि पुच्छेषु पिण्डपलीनां यथांश्चभाक्षन्तरात्मापीति शशा स्थात् । पुच्छ-  
विभागपर्यवसान उक्तत्वाङ्ग तच्छङ्गावसर इति यदि तर्हि स्फूर्त्यन्तरेष्वेका एवौरसो न  
भातरो न पितरौ इति खतन्त्रस्य मुख्यगौणपुच्छस्ये परन्याद्यनधिकारप्रतिपादक-  
शास्त्रस्य सुतरामानर्थक्षम्य स्थात् स्यक्षीकरणार्थं अर्थन्यायसिद्धमपि निवध्यते अवहार-  
शास्त्र इति समाधिः पदमात्रे सुतरां सुवदः । स्यक्षार्थं विभक्षासंख्यत्वे अपि  
कुतोनेपाच इति चेत् । खतन्त्रेष्वानुगीतान्म् । आरोपे सति निभित्तानुसरणमिति  
न्याये च यत्र न्यायार्थसिद्धिनिवन्धनमत्ति तत्र सिद्धस्य गतिस्थितिनीयेति दीत्या  
स्यक्षीकरणार्थतया वैयर्थ्यं परिक्रियते न तु तदभिधानापादादनं सर्वत्रोचितम् ।

यत्र संख्यिनालु संख्यीत्वस्य आचरित्कारावसरे विशेषविधानमाणार्थत्वम्  
परन्यायपवादकालमित्युक्तान्तरितवार्तम् । तुश्च्वद्विरोधात् । उक्तरोत्तरपूर्वोपपवाद-  
सन्दर्भात् । अतएव प्रतिवाक्यं तुश्च्वदोपादानम् । श्लोवादिवाक्यं पुच्छादिसकलादाय-  
यद्विधिकारिकां श्लोवादिनाधिकारापवादकमिति । अतएव मिताच्चरायां वि-  
क्षानेश्वरेण तथैव तानि वचनान्यवतारितानि व्याकृतानि च ।

यत्तु किञ्चेत्यादिना शृङ्खलिखितवचने भाचभावे पित्रोरधिकारो विकल्प-  
खितत्वादप्यतिपत्तेणु । भवदन्यथापि शुक्रमेत्या विभक्षासंख्यपिण्डपरत्वे तस्य  
आत्मानुं शृङ्खलवेदापर्यन्तुयोगात् ।

यथापि चेत्यादि । तदपि तुल्ययोगज्ञेभित्युपेक्ष्यम् ।

यदपि किञ्चेत्यादि । तदपि मात्रंश्च विशेषविधानमन्त्येऽपि योग्यतया पित्रंश्च सम्भ-  
वादचोद्यम् । बलुतत्तु साक्षात्मात्मा विभागभावेपि जीवदिभागे पिच्छिक्या तस्या  
अपि भागसम्भवादजीवविभागे तु साक्षादेव विभागोक्तः प्रीत्याऽभिसन्धिविशेष-  
पूर्वकं पुच्छः क्षह संसर्गसम्भवत् । न चैव विभक्षो य इत्यादिवहस्तिवचनविरोधः ।  
अतएव मिताच्चराकृताप्युक्तम् । संसर्गस्च न येन केनापि । किन्तु पित्रा पिण्डेण  
वेत्यत्र सम्भवित्वेन तदधनमुपन्यस्यतेति वाच्यम् । यतस्यथा सति सकाललोकवहार-  
सिद्धो दौड्हिचादिसंसर्गोऽप्यन्यात्मः स्थात् । तस्याद्येषां परस्यरविभागस्तेषामेव  
तत्पर्यक्तः परस्यरसंसर्गोऽप्यभिसन्धिविशेषपूर्वको न परस्यरविभित्तिश्चाकरणमात्रेष

विविगादीनामिवेत्वं दृहस्यतिवचनतात्पर्यज्ञ माचादिनिष्ठात् । चिदेवपरिसंख्यापत्तेः । अतएव भाचा वा पिण्डयेवाय वेत्वनास्यां वादिशब्दलत्तोपातः । रत्नाकरे चक्रेन्द्रेवाप्युक्तम् । अनास्थायां वाकारः । येन पिण्डयेजेनांश्चिना द्रातविमाग शक्तं स्थितः संहृष्टः सर्वलोकाहृष्टोते जन्मत इति । वाचस्यतिरप्येवमेवाह । यत्तु तेनोत्तमं एषग्धनानामेकचमेलनमेव संसर्गेऽताघवात् न तु विभागपूर्वकत्वं तत्र विशेषयं परस्परानुभवित्वा तत्र हेतुरिति । तत्र । पुनः इव्विरोधात् विभागेऽपि संसर्गशब्दव्येगापत्तेः जन्मना स्वत्वानपूर्णीकारेण तत्त्वापि एषग्धनमेलनात् अन्यथा विकल्प उभयस्य शास्त्रार्थत्वात् पित्रादिसमुच्छितसंसर्गापि सकललोकविज्ञो व्याङ्ग्येत । मिताक्षराकृतोपातः न येन केनापीतिवदतो यथाकथं चित्तद्रव्यमिश्रणसंसर्गव्याकृत्वा विभागपूर्वकाभिसम्बिशेषतासंसर्गनियम एवाभिप्रेतो न माचादित्यावत्तिः ।

भाचाधिकारावसरे संहृष्टिसोदरत्वादिविशेषविधानार्थत्वं च यदस्य संहृष्टिनस्तु संहृष्टीत्वादिवचनस्य भवतामिहितं तत्त्वतितुच्छम् पित्रादिषु गोत्रजादिषु चास्य प्रदृशविरोधात् तत्र तत्रैव विस्तरेण वक्ष्यामः ।

तत्र तावद्यायविरोधो दूषणम् ।

नापि वचनविरोधः । संहृष्टस्यायभार्यापिण्डकस्येति तेन विशेषणादपलाभाव इव भार्यापित्रभाव एव संहृष्टिभावनेऽधिकार आयातीति वाच्यम् । यतः संहृष्टिधनयहृष्टं संहृष्टिनां तु योभागः स तस्यानेष्यते बुधैरिति नारदेन साक्षादेव तद्वार्यायाः प्रतिषिद्धम् संहृष्टिनां तु योभागस्तेषामेव स इष्टते इति कल्पतर्वादिष्टपठेऽप्येवकारेण पत्न्यादिपतिषेष आयात्येव । न चैवं नारदवचनम् भावृत्यामप्रजा इत्यस्य प्रक्रमवलात्संहृष्टिविषयत्वे संहृष्टिनां तु योभाग इत्यनेन पौनशक्तयां स्थादतः स्त्रीशब्दस्यात् अवणादन्त्रं च पलीशब्दस्य पलीविषयत्वेन व्यवस्थैव साधीयसीति वाच्यम् । पूर्वोक्तविवरणेन स्त्रीधनाविभाव्यतद्वरणमाचाविधानपरतया तदप्रसक्तोः । स्त्रीमाचस्य तड़गयहृष्टस्य पलीत्यादिवाक्यैः पलीपदोपेतैरप्रसक्तत्वेन तत्त्वतिषेधासंभवाच । विशिष्टवचने च रिक्षयेभादितिनियोगविशेषयं भवन्मतेऽनुपर्यन्तं पुत्रादिरहितपतिष्ठनयहृष्टं यदि विभागाविभागसंसार्गादिविशेषत्वे तस्याः सर्वांदौ तर्हि रिक्षयेभेन नियोगाभीकारत्वस्याः कदा प्रसक्तो यो निषिधते । मन्मते तु संहृष्टाविभक्तभावस्त्वे नारदादिवचनात्स्या अपुच्छनसम्बन्धाभावेन पुत्रद्वारैव तत्सम्बन्धात्प्रसक्तो रिक्षयेभेन नियोगस्त्रिकारः प्रतिषिधते । न चाचापि पलीभिन्नाया भार्याया भर्तुर्धनानधिकारात्तस्या एव रिक्षयेभेन प्रसक्तो निषिधते नियोगस्त्रीकार इति न भवदुक्तप्रसक्तिप्रतीक्षेति वाच्यम् । पलगा एव तत्र प्रस्तुतत्वात्तद्विभाव्याप्यपरत्वानुपत्तेः । अतएव धारेश्वरादिभिर्नियोगार्थिपलीपरत्वे पलीत्यादिवचनस्तेव विशिष्टवचनं प्रमाणतयोन्यत्तम् । तस्माद्वारदविशिष्टवचनात् संहृष्टिभर्तुर्धनयहृष्टप्रतिषेषः पलगा दृहस्यतिवचने चानपत्रस्य धर्मोऽयमभार्यापिण्डस्य चेति चर्यनात्पत्राणां सर्वां सोदरस्यापि संहृष्टिभावनयहृष्टप्रतिषेष इति विरोध आवद्याः कथचिदिवय-

यत्क्षया परिहर्त्वेऽपरिहते अन्यैः परिक्रियते । संख्योत्तितप्रकारवाचान्वस्त्रमय-  
भार्यापिलकस्य संख्यिविशेषवालमन्यथासिद्धानारदादिवाक्यानुरोधादसंख्यिपरत्वा-  
वाक्यकातया बाध्यते । वाक्यविरेखे प्रकारवाचान्वयेऽकल्पात् । न चायमिति सर्वगाम्भी-  
संख्यिधनयहश्चरूपधर्मस्य प्रकान्तस्यानेन विशेषाभिधानादनपत्वस्येतिवदभार्या-  
पिटकस्थेवस्यापि संख्यिप्रभीतविशेषवालमितिवाक्ययेरवायं विरेखः न वाक्यप्रक-  
रूपयोरिति वाचम् । सर्वनाम्भासंख्यिधनयहश्चरामर्शकल्पेऽपि द्वेऽथमनपत्वसंख्यि-  
सामिधनयहश्चरूपो धर्मो भार्यापिटकहितस्यासंख्यिनोऽप्यनपत्वस्य प्रभीतस्य ।  
अतसंख्यिविभक्तप्रभीतस्य धनन्तु भार्यापिटकहितस्यैवानपत्वस्य द्वेदरो मट्टीयान्न  
भार्यापिचन्यतरदितिवाक्यार्थापपत्तेः । चकारेऽप्येवमनुक्तासंख्यिसमुच्चयार्थो चां-  
ख्येयः । अतस्यासंख्यिविभयेणानेन प्रकरणविक्षेपे जाते संख्यानन्तु यः काञ्चिदि-  
त्यग्निमवाक्ये संख्यपदेपादानमपि सार्थकमवति अन्यथा प्रकामदेवाचापि तक्षाभे-  
षणमन्वप्रयोजनं स्यात् । अतएव तात्त्विये निविदधिकरणेऽसमझनिविद्विच्छिन्न-  
सामिधेन्यवान्तरप्रकारवायाद्यसुपत्तीतं न सामिधेन्यकुमपि तु महाप्रकारवाहशं-  
पूर्वमासाङ्गम् । ये तु पञ्चात्मानागुणात्मे पुनर्वचनादेव दृश्यानुवादेनैव हादशोपसा-  
न्ववत्सामिधेन्यवादेन विधोयन्त इतिभट्टमतेन सिद्धान्तितम् । वल्लुतल्लु या तस्य  
भगिनीत्वनेन द्वेदरामात्रे यौ भगिन्यधिकारः संख्यधने प्रतीयते । तस्यैवाक्यविभित-  
स्यानपत्वस्येति वाक्यविशेषेनायमिति सर्वगाम्भी सर्वामर्शकस्य च न कोऽपि विरेखः  
चक्रिकायामप्यवेवोक्तम् ।

अविभक्तापुत्रपतिखामिकात्मकधनयहश्चन्तु पत्ना काव्यानवचनविरुद्धम् ।  
यदाह । खर्याते खामिनि खी तु यासाच्छादनभागिनी । अविभक्ते धनांश्चन्तु प्राप्नो-  
त्वामरणान्तिकम् । तुष्ट्वदो वाशब्दार्थे तथा चायमर्थः । यासाच्छादनमेव साक्षा-  
क्षभते आमरणान्तिकं यावच्चीवं यावता धनेन जीवनं खण्डधिकारिकमावश्यकच्च कर्म  
सिद्धति तावत्तं धनांश्च वा प्राप्नोति । धनांशमामरणान्तिकमित्युक्तोः छत्क्षम्यनमवि-  
भक्तस्य पर्युर्खभत इति निरस्तम् । न च खीशब्दश्रवणात् पलीव्यतिरिक्तखीपरभिद-  
मपीति वाचम् । अविभक्त इति विशेषवानर्थक्यापत्तेः । विभक्तेऽपि भर्त्तरि पली-  
भिन्नाया अपुत्राया भरणमात्रोक्तोः । अतएव कृतेऽप्यांश्च इत्यनुदत्तौ । द्वहस्यतिः ।  
प्रदद्यात्मेव पिण्डस्त्वेचांश्च वा यदीच्छति । अस्य वाच्यानां स्मृतिचक्रिकायाम् । पिण्ड-  
यहश्चरामनाच्छादनोपलक्षणार्थान्तर्याम्भं धननासाम्भादेकं चेत्रांश्च वा खरुच्छा भवेत्-  
श्चार्हपलीव्यतिरिक्तविधवाये भावादित्यज्ञनयाद्य विभावात् । एवकारः प्रदानस्याव-  
शक्तार्थं इति । एतद्विषयकमेव नारदवचनम् । यावत्यो विधवाः साध्वगे व्येष्वेन  
न्मुरेव वा । गोचरेनापि वान्येन भर्त्त्वायाश्चादनाश्चनैरिति । भर्त्वधनयाहित्वेति  
सर्वत्र श्रेष्ठः । धनयहश्चनिमित्तत्वाद्युर्बाणं स्यात् ।

साध्व इत्वनेन सर्वत्र साध्वीनामेव भर्त्वधनसाध्वीनान्तु पलीनाम्भ न तदपि ।  
आच्छिन्नुरितरात् त्विति प्रागुक्तनारदवचनवाच्चविधादिभः । अतएव साध्वीना-

जीवनार्थं अशुरादिभिर्दत्तमन्वैरपि दायादैर्नायहरणीयमित्याह उद्दस्यतः । स्थाव-  
रादिधनं स्त्रीभो यहतं अशुरेण तु । न तच्छक्यमपाहतुं दायादैरिह कर्हिचिदिति ॥

अन्याहृतीनान्तु दत्तमप्यपहर्त्यमित्याह कात्यायनः । भोक्तुमर्हति ज्ञापांशं  
गुरुशुशूष्टो रता । न कुर्याददि मुश्रूषाच्चैलपिष्ठे नियोजयेत् । अपकारक्रियायुक्ता  
निर्लब्जा चार्धनाधिका । व्यभिचाररता या च त्वीधनं न च सार्हति ॥ नार्हतीत्यनेन  
न देयं जीवनपर्याप्तमपि । दत्तमपि च तादृशाः सकाशादपहरणीयमिति दयमप्युक्तं  
भवति ।

यत्तु तस्मात् स्त्रियोऽनिन्द्रिया अदाया इति श्रुतिवचनं तम्भूलकच्च अनिन्द्रिया  
द्वादयादाः स्त्रियो नित्यमिति स्थितिरितिमनुवचनं तद्यमपि यासां भद्रायाहिकया  
धनयहयां नोर्त्ता तदिष्यमवसेयम् । गौतमिताक्षरायां इरदत्तोऽप्येवमेवाह ।  
केचित्तु निरिन्द्रियपदसमभित्याहारान्निदामात्रपरं तदिवाऽङ्गलत्र । दायादत्तांश्चे  
निदाया निषेधकल्पनावश्यमवात् । रागादाययहग्राह्नेनिवानुवादासम्भवात् । अ-  
निन्द्रियतन्तु पुम्पारतन्त्रगत् कथच्चिदनुवादः । वसुसभावविपरीतनिषेधकल्पनस्य  
बाधात् । तस्मात् पूर्वोक्त एव समाधिः । पराग्नरसूतिटीकायां विद्यारण्याश्चरणात्तु  
श्रुतिमेवैनामन्यथा आचल्युः पलीवनयहे पलगा अंशो नात्तीत्यदायादपदस्यार्थः ।  
तत्र हेतुरनिन्द्रिया इति इन्द्रियं वै सोमपीथ इति सोमेऽप्यनिन्द्रियशब्दप्रयोगात्ततो  
निर्गता इति सोमपानानधिक्षता इति पलीवनयहप्रश्नेति ॥

इति पलीवधिकारविचारः ।

## PART II.

पलगभावे दुहितरोऽप्युच्चविभक्तासंख्यिभमाजः । तथा च मनुः । यथैवात्मा  
सथा पुच्चः पुच्चेण दुहिता समा । तस्यामात्मनि तिष्ठन्त्यां कथमन्वो धनं हरेत् ॥  
उद्दस्यतिरपि । अङ्गादङ्गात्ममवति पुच्चवद् दुहिता वृणाम् । तस्मात् पितृधनवन्यः  
कथं गृहीत मानव इति । अत्र पुच्चेण समा पुच्चवदिति च साक्षात्काञ्चन्त्येऽपि पुच्चे  
पितृवयवानां बाङ्गल्येन संक्षान्तेऽदुहितरि च पलोगां । पुमान् पुंसोऽधिके शुक्रे स्त्री  
मवत्यधिके स्त्रियाः । इत्यादिवचनैः शुतिव्यायुर्वेदे च प्रतिपादनात् पुच्चतुल्यम्  
दुहितुवक्तामिति द्वच्चम् । आत्मनि । आत्मा वै जायते पुच्च इत्यात्मभूतपुच्चतुल्याया-  
मित्यर्थः । तिष्ठन्यामित्यनादरे सप्तमी तामनाहृत्यवर्थः ।

यद्यप्यनेनौरसपुच्चाभावे दुहितुर्जनयहयमित्यन्याय उक्तालयापि गौचर्यपुच्च-  
पलगोरभावे दुहितुर्जनयहयमिति को न्यायः । उच्चते । नारदेन मन्दानुग्रहाय  
सोऽपि स्पष्टीकृतः । यदाह । पुच्चाभावे तु दुहिता तुल्यसन्तानदर्शनादिति । विड-  
तस्त्वेद्यनेत्र । पुच्चच्च दुहिता चौमौ पितृसन्तानकारकाविति । अथमाश्यः ॥ पुच्च-  
दुहितरावूमौ पितुः पौच्चदौहिताल्पसन्तानकारकावतः सन्तानप्रवर्त्तकात्मस्य तुल्य-  
लात् दुहितुरपि पुच्चवधिकारः । पौच्चदौहिताल्पसन्तानयोर्च स्त्रूपताल्पस्य

त्वाभावात्मार्थ्यं तस्तु लक्ष्यत्वमभिप्रेतम् । कार्यमपि नर्वापक्षरक्षरिकथप्रदशकद्वारम् पुच्छोच्चे चर्चयं देयम् । पितामहद्विषयमधिकात्म च । तच स्यात्सदृशं साम्यमितुः पुच्छस्य चोभयोरिति । वचनाभ्यां पौच्चे सति दौहित्रस्य तदनधिकारात् । तेगाहृष्टमन्न कार्यं आङ्गकर्क्षत्वम् । पूर्वेषाम्नु खधाकारे पौच्चा दौहित्रका मता इति विष्णुतोः । एव च द्वृष्टादृष्टोपकारकसंकानमुखेनोपकारकपुच्छात् केवलादृष्टोपकारकसंकानमुखेनोपकारिका दुहिता न्यूना । न चैवम्यत्वपेक्षया प्रत्यासन्ना जन्मा दुहितेति पल्लीतः पूर्वं सैव धनमहृतीति वाच्यम् । यतः सङ्घाधिकारेणाभिहेत्रादिवैदिककर्मोपकारिका कामाख्यपुरुषार्थसाधनतया सन्तानसाधनतया च द्वृष्टादृष्टोपकारकार्ची देहर्क्षसंकुता पत्न्येव ततोऽधिका । ततस्य पुच्छाभाव इति प्रब्रह्मावस्थाप्यपलक्षकं प्राणिलिखितविष्णुवचनादस्माच्च योगीश्वरवचनात् ।

यदपि पुच्छकर्क्षत्राङ्गे सम्बद्धानतया स्यमेवादृष्टोपकारकः पिता दुहितपेक्षया प्रत्यासन्न इति पिता हरेदपुच्छस्य रिकथमितिवचनस्यावसर उचितो दुहितुः प्राणक् । तथापि तस्यामात्मनि तिष्ठन्त्यमित्यनेन श्रीरप्रत्यासन्न्या सैवायेसरीति तदभावे तदचनस्यावसरः । वा शब्दोपादानेन तस्य क्रमपरत्वाभावात् ।

2. जीमूतवाहनस्तु दुहितुरधिकारे सन्तानकारकत्वस्य ऐतोऽग्निर्देश्यात्मन्तानस्य च पिण्डस्यैवेपकारकत्वादपिण्डस्यानुपकारकत्वेनान्यसन्तानादसन्तानाचाविशेषात् पुच्छती सम्भावितपुच्छा वा दुहिता धनाधिकारिणी । विधवात्मनस्यात्मदुहितप्रस्तुतादिना विपर्यक्षपुच्छा पुनर्ज्ञाधिकारिष्येवेति दीक्षितमत्मादरण्यीयमित्याह ।

तदपि चिन्त्यम् । प्राथमिककन्याधिकारतये । अपुच्छतस्य कुमारी अक्षयं गृहीयात्मदभावे चोदेति पराश्रवचनात् कन्याभस्य पिण्डवादितिवेलवचनाच तेनैव प्रथमं कन्यैवैका पिण्डवादिकारिणीत्यनेन यथेनाभिधानात् तदानीं च पुच्छस्यावनानिस्याभावात् । ऐतुर्जिर्देश्यस्य प्रत्यासन्न्यतिश्यमात्रप्रदर्शकतयाप्यपत्तेः । किञ्च । स्यमेव कन्याया असम्भवे सम्भावितपुच्छायाः पुच्छवाचाधिकार इति वदन् ऐतोर्यभिचारितां दर्शयति । तस्मादस्मदुक्तरोत्यैव प्रत्यासन्न्यर्थतया ऐतुर्याख्येयः ।

3. धारेश्वरदेवस्याभिदेवशतप्रभृतयस्तु । पिता हरेदपुच्छस्येवादिवचनविरोधपरिहाराय दुहितधिकारप्रतिपादकवचसां पुच्छिकाविषयत्वं तदभावे तु पित्राद्यरेव यथोक्तव्यमेषाधिकारिणा इत्वाङ्गः । तदतिपेशलम् । पुच्छिकाया चैरसोधर्मपलीजस्तत्पमः पुच्छिकासुतः । छन्तीयः पुच्छिकापुच्छः विज्ञायत इति योगीश्वरविशिष्टादिवचने गैत्रेणपुच्छकोटिनिविष्णायाः क्षेत्रजादिपुच्छवत् न भावतरो न पितरः पुच्छा रिकथारायः पितुरिति गौणपुच्छविषयेण मानवेन वचनेन पलां सत्वामपि रिकथाधिष्ठानात्मदभावे रिकथाधिलं दद्वापूर्णिकयैव सिङ्गमिति वचनारम्भानर्थक्षयापत्तेः । दुहितमात्रवाचकानां वचनानां विना कारणं विशेषपरत्वकल्पनागुपत्तेश्च । किञ्च ।

भवन्ते अङ्गादङ्गात्सम्भवतीत्यादिना पुच्छिकाविषयेण वचसा पुच्छिकाया धनयहणे उक्ते पुनः । सदृशी सदृशेनेऽजा साम्बी शुच्छूषणे रता । क्षताऽक्षता वा पुच्छस्य पितु-  
र्जनहरी तु सा ॥ इत्यनेन पुनर्जनवृत्तप्रतिपादनक्षेनैव सुनिना क्रियमाणं विवरण-  
माचतयाऽप्युनरक्षतप्रार्थं स्यात् । सामान्यविशेषविषयतया तु स्पष्टमेवापौनरक्षयम् ।  
सदृशी पिण्डसर्वणी । सदृशेन सर्वणेनोष्ठेति प्रकृष्टाप्रकृष्टवर्णसम्बन्धनिरासाय । तत्त्वा-  
तस्योत्तमवर्णमातामहाराजादिनिषेधादिति जीमूतवाहनेऽक्षमनादेयम् । जाग्रपदेनै-  
वाधमवर्णसम्बन्धनिरासात् । नक्षधमवर्णाऽत्वमुक्तमवर्णायाः सम्भवति । तस्मादुप-  
मवर्णनिरासार्थमेव सदृशयहणम् । ननु नारदेन कव्यारूपाणां पिण्डभावृहितानां  
सर्वासामेव दुहितृणां पिण्डनाप्राप्तिः संसर्गेऽप्युभिहिता । यथाह । स्यात् चेत्  
दुहिता तस्याः पिच्छोशोभरणे मतः । आलंकाराराजरेष्ट्रागम्यरतो विभृयत्पतिरिति ॥  
तस्या इति पतिपुत्रविवृतीनपलीमधिकायाह । तेन तादृशा यदि दुहिता विद्यते  
तस्याभरणनिमित्तमाचपिच्छोऽग्रस्तस्मात् विवाहसंखारादूरणार्थमेव सा पिण्डधन-  
भागं इरेत्यरतो विवाहादूर्जं पतिक्षां विभृयात् । तेन लावत्वाजभरणावशिष्यमपि  
ततो गृहीयात् । यथेष्विनियोगार्थन्तु कव्यायाः पिण्डनयहणं दूरपात्तमेव ।  
ततस्मास्यापवादकानि दुहितुः पिण्डधनप्राप्तिप्रतिपादकानि वधनानि सर्वाणि पुच्छिका-  
विषयाणेव वाचानि । अन्यथा द्योरपि दुहितसामान्यविषयतयेऽप्युग्मापवादत्वानुप-  
पत्तेः । तस्माद्वारेश्वरादिमतमनुमन्तव्यमिति चेत् । स्यादेवं यदि नारदवचनं  
विभक्तविषयं स्यात् । पौर्वोपर्यपर्यालोचनया संख्याविभक्तविषयन्तत् स्फुटमवगम्यते ।  
ततस्य विभक्तविषये दुहितमाचस्य पल्न्यभावे पिण्डधने यहणप्रतिपादकानि प्रापका-  
णेव नापवादकानीति न पुच्छिकामाचविषयत्वे तेषां किमपि वीजम्यह्यामः । यत्  
स्कलपिण्डधनयहणाधिकारप्रतिपादकतया कन्याभ्य इत्यादिदेवलबचनं जीमूतवाहने-  
नोपन्यस्तं तत् पूर्वापरविवरजम् । जीवद्विभागे कन्याभ्यः विवाहमाचोपयुक्तधने तस्य  
प्रमाणतयेऽपन्यासात् । तदपि चास्माभिः प्राञ्जनिरक्षयम् ।

4. दुहितव्यपि प्रथमप्रत्ताः पिण्डधनं गृहीयुक्तदभावे प्रत्ताः तासामपि मध्ये  
प्रागप्रतिष्ठितास्तदभावे प्रतिष्ठिता सर्वाः समानरूपात्तु समं विभव्य गृहीयुक्त-  
व्यर्थः सिद्धम् । तथा च चाचायनः । पली पद्मुर्जनहरी या स्यादव्यभिचारिणी ।  
तदभावे तु दुहिता यद्यनूजा भवेत् तदेति । गौतमः खीधनं दुहितृशाम-  
प्रत्तानामप्रतिष्ठितानाच्चेति । अप्रतिष्ठिता निर्धनाः । यद्यपि खीधनमित्युक्तं तथापि  
तु ल्यन्यायतया पिण्डधनविषयमप्येतत् । वन्धुत्वादिना सन्तानरहिता प्रति-  
ष्ठितेति तु न युक्तम् । तस्याः सन्तानमुखेनादृष्टोपकाराभावेन धनहारिता-  
येगात् ।

5. सदृशी सदृशेनोष्ठेति प्राकृपठितं दृष्ट्यतिवचनं स्मृतिच्छ्रिकाकार इत्यं  
चाचल्यौ । अचाचानि चालारि विशेषवानि पली ऊर्जमर्थयाहिकीदुहितविष-  
यादि । ततः प्राग्नयाहिकीदुहितविशेषवे दे अवशिष्टे । ज्ञाताऽक्षता वैत्तम्

पुनिकेति विशेषाधाराहरः । इतरत्र दुहितेति विशेषाधाराहरः । वाश्वद्यस्य  
अवस्थितविक्षयार्थः । एवस्थायमर्थः । कौरसपुत्रविहीनस्य पितुर्जनं दिविधापि  
पुनिका पत्ना: पूर्वं गृहीयत् । सवर्णादिविशेषबोपेता तु दुहिता तत ऊर्जमिति ।  
एवस्थ पत्ना ऊर्जं सवर्णादिविशेषबोपेतप्रतिष्ठिताऽप्रतिष्ठितोऽग्नानां दुहितृणां  
समवाये प्रागानूष्टेव गृहीति पिता भर्तुव्यतात् । तदभावे ऊडाऽप्रतिष्ठिता । भर्ता  
भर्तुव्यत्वेऽपि भर्तुभरणासामर्थ्यानाप्रतिष्ठितव्यात् । तदभावे प्रागुक्तया प्रत्यास्था  
सवर्णादिविशेषबोपेता प्रतिष्ठितापि धनं गृहीति ।

अन्येत्तु ज्ञतेति पुत्रिकापरमज्ञतेति दुहितमात्रपरमभ्युपेत्वा वाश्वद्यस्य नास्था-  
परत्वमास्थायाखिलं दुहितमात्रविषयं विशेषाधाराहरमन्तरेणैव आख्यातम् । सेवने न  
दुहितमात्रपरामर्थात् ।

6. दुहितर इति बज्जवचनं सजातीयानां समांश्टोऽसमानजातीयानां वर्ण-  
क्रमेण विशेषांश्च इति प्रतिपादनाय ।

इति दुहितुरधिकारः ।

### PART III.

1. दुहितुरभावे दौहितः । अश्वदानुकासमुच्चयार्थात् । तथा च विष्णुः ।  
अपुत्रपौत्रसन्नाने दौहित्रा धनमास्रुयः । पूर्वेषान्तु खधाकारे पौत्रदौहित्रकाः  
समाः ॥ अपुत्रपौत्रेति दुहित्रपर्यन्ताभावोपलक्ष्यात् । मनुरपि । अष्टता वा ज्ञाता  
वापि यं विन्देत्सदृशात्मुतम् । पौत्री मातामहस्तेन दद्यात्पिण्डं हरेङ्गनमिति ॥ पौत्री-  
त्वं नेन यथा पुत्रांमावै पौत्रः पिलामहधनाधिकारी तथा दुहित्रभावे दौहित्र इत्यु-  
क्तम् । दृष्टस्तिरपि । यथा पिलधने खात्यं तस्याः सत्त्वपि बन्धुम् । तथैव तत्पुत्रो-  
ऽपीष्टे मात्रमातामहे धने ॥ यथा येन दौहित्रदेयपिण्डेन दुहिता पिलधनाधिका-  
रिणी तथैव तेनैव पिलधनेन दुहितसुतोऽपि मातामहधने खामी सत्त्वपि बन्धुम्  
पितादिविषयार्थः ।

2. न च पुत्रिकापुत्रविषयमिदं वचनम् । तस्या इति तत्पुत्र इति च  
सर्वजामध्यात्मानदुहितमात्रपरामर्थात् । अतएव मनुरपि दौहित्रमात्रस्यैव माता-  
महधनाधिकारं दर्शयति । दौहित्रो छाखिलं रिक्षमपुत्रस्य पितुर्वर्षेत् । स एव  
दद्याद् दौहित्रो पितृं मातामहाय च । पौत्रदौहित्रयेत्तोक्ते न विशेषोऽक्षिं  
धर्मतः । तयोर्विद्या मातापितरौ सम्भूतौ तस्य देहत इति । पितुरिति मातुः पितु-  
रिति आख्येयम् । अतएवाये मातामहाय चेत्याह । अथवा यथा स खपितुरखिलं  
रिक्षं गृहीति तथाऽपुत्रस्य मातामहस्यापि । खयमेव तत्पुत्रकार्यकारित्वात् । तदे-  
वाह स एवेति । खयपिते मातामहाय चेत्यार्थः । मातापितराविति च न यथाक्रम-  
मध्ययः । किञ्चु । पौत्रस्य पिता दौहित्रस्य माता धनखामिनो देहतः सम्भूताविति  
यथावोग्यम् ।

३. केचिदपुच्छपौचेति यथाकृतविष्णुवचनात्पलीदुहिष्टः प्राग् दौहिष्टस्य  
धनाधिकारमाङ्गल्योगीश्वरविरोधात्तद्यैव तत्सुतोऽप्येति हइस्यतिवचरे इयि दुहिष्ट-  
स्य जघन्यभावावर्भे हेयम् ।

इति दौहिष्टाधिकारः ।

#### PART IV.

१. दौहिष्टाभावे पितरौ धनभाजौ ।

२. अत्र मिताक्षरा । यद्यपि युगपदधिकारवचनतार्थां इन्द्रसरक्षात्तदप-  
वादत्वाचैकाशेवत्य मातापित्रोर्ज्ञनयह्यो क्रमे न प्रतीयते । तथापि वियहवाक्ये  
मात्रशब्दस्य पर्वनिपातादेकशेषाभावपद्धे च मातापितराविवत्तं माट्रशब्दस्य पर्व-  
अवशात्पाठकमादेवार्थकमेऽवगम्यमानः क्रमाकांक्षार्थां सर्वां न परिवक्षुमर्ह इति  
प्रथमं माताऽपुच्छपुच्छधनभाक् तदभावे पिता । किञ्च पिता पुच्छान्तरेष्वपि साधारणो  
माताख्यैवासाधारणीति प्रत्यासच्छतिश्चयादनन्तरः सपिण्डाद्यस्य सस्य धनमध्वेदिति  
मनुना प्रत्यासच्छतिश्चयेन धनयहशाधिकारस्य विनिगमितत्वात्पिण्डसमानोदकादि-  
ष्वेव विनिगमनाकाङ्क्षायामेतद्वचनप्रवृत्तेरचायदगडवारितवादिति ।

३. अत्र स्मृतिचन्द्रिकाकारः प्रगत्यभवत इत्यत्रोत्पत्तिवाक्ये  
क्रमावगत्यभावेन याज्ञकमेण प्रधानानुकृतानक्रमः पश्चमे निरूपितो नत्वेकाशेवत्य एव  
काचित्कमावगतिरप्यादिति । तद्वद्वापि क्रमार्थमन्यत्रमालमन्वेषणीयन्तदभाव  
इतरेतरयोगस्य इन्द्रवदेकशेषेऽप्यवगतेर्विमञ्चयैव पित्रोक्तुल्यतया धनयह्यां युक्तम् ।  
यतु पिता सपलीपुच्छेष्वपि साधारणो माता त्वसाधारणोति प्रत्यासच्छतिश्चयात्तस्या  
एव पितृः प्राग्धनयहशब्दात्मविष्णुवत्तदप्यन्यायम् । नहि जननीजनकायोर्जन्यं  
प्रति प्रत्यासच्छितारत्यमस्ति । पुच्छान्तरजनकास्यायेतज्जनकताया माल्यतुल्यतात् ।  
नहि अनकलापि आसच्छवर्तिनो । न च पिण्डाहीतवन्मं भिन्नोदरेष्वपि संक्रामति ।  
माल्यतुल्यत्वे तत्सहेदरेष्वेवेति मातुरेव धनयहशमिति वाच्यम् । तस्याः प्रत्या-  
स्तेभ्याद्यमग्नीधनाधिकारविनिगमकतया जनकाज्ञनव्या धनयहशविनिगमकत्वास-  
मवात् । इन्द्रस्यानीयैकशेषेवतुल्यतावगतौ प्रत्यासस्तेरप्येतकलाच । सर्वां हि  
क्रमाकाङ्क्षार्थां सा क्रमनियामका न त्वसामाप्ति । तस्मात् पित्रोक्तुल्यताम्बाधिम-  
ञ्चयैवानपत्वविभुदयुच्छवनयहशमिति श्रीकरक्षाद्ययुक्तम् । पिता इरेदपुच्छस्य रिक्षं ।  
खर्षात्तस्य द्वापुच्छस्य माता दायमवाभ्युयादित्यादिवचनेषु पितृमालुच्छ निरपेक्षासाम्ब-  
प्रतीतेर्युगपद्म यहश्वायेगात् । श्रीहिष्टवयोर्निरपेक्षासाधनत्वप्रतीतौ मिष्टलायेगावत् ।  
केचित्तु मालुर्गम्भधारणोषष्वादिनात्प्रतीतौ मिष्टलायेगावत् । पितृमालुष्वादिति-  
तिरिच्छते इत्यादिस्मरणात्प्रतीते इत्यादिस्मरणात्प्रतीतौ मिष्टलायेगावत् । पितृरपि  
संख्याद्यसिसमाइनादिना बङ्गधा संविधात्वात्तयोरपि पिता अथान् श्रीजग्रामाच्छ-  
दर्शनादिलादिस्मरणेन सत्रतिपक्षत्वाच । गौरवमात्रस्य धनयहशप्रयेत्कलात्वे । उत्ता-

दक्षब्रह्मदात्रोर्गतीयन् ब्रह्मदः पितराविद्युपाद्याच्च पिण्डतोऽपि पूर्वमात्रार्थस्याधिकारापत्तेर्व्वेष्ट्वात्मात्पुच्येत्स्व सतोः पितरामहपिण्डव्यादीनमेव प्रागधिकारापत्तेः ।

4. जीमुतवाहनस्तु । पितराविद्युपाद्यात्मिकाम एवावगम्यते । तथा हि पिण्डप्रातिपदिकात्मथमं पितुरवगतौ द्विचनवलेन तेनैकशेषकल्पनायां सरूपैकशेषासमवे विशुमन्मादिवचनसंवादाच्च विरूपैकशेषत्वनिष्ठये मातुरवगमात् । अतः क्रमज्ञानं क्रमाभिधानथाप्तं क्रमाभिधाने आपके निवर्तमाने निवर्तत इति श्रीकरोक्तिर्विपरीतक्रमेक्षित्वा विज्ञानेश्वरीया न युक्तोव्याप्ते ।

5. तस्मात्त्रैयाधिकक्रमस्याचाववस्थितत्वाद् वृहदिष्ट्युवचनोक्तेः क्रम आदर्शीयः । तत्र च दुष्टिगामीयुक्ता तदभावे पिण्डगामि तदभावे माण्डगामीयुक्तम् । मिताक्षराकारस्य तु प्रथमत एव ताटशपाठेनैव वृहदिष्ट्युवचनं लिखतस्तद्विज्ञान्यायमात्रावलम्बनेन पितराविद्युच्च पिण्डतः प्राज्ञातुः पुच्छनाधिकारं सिङ्गान्तयते महत्वेव वृहद्यशून्यता प्रतिभाति । दौष्टिचत्वार्यापि दुष्टिकोटिनिविष्ट्वाद् वृहदिष्ट्युका पृथगनभिधानं तेन दौष्टिचाभावोऽपि दुष्टिभावेनोपलक्षत इति मन्त्रयम् । तस्मात् सूतिचन्द्रिकामदग्रलकारकल्पतदग्रलकारपारिजातकारप्रभृतीनां वक्षनां पितुरभावे मातुः पुच्छनाधिकारं इत्येव लिङ्गान्तः ।

वाचस्यतिना तु तदभावे माण्डगामि तदभावे पिण्डगामीति वृहदिष्ट्युवचनं पठिला यथा मिताक्षरात्मामेव सिङ्गान्तिं ततु कुचापि तदतिरिक्तयन्ते तथा पाठस्यालिखनाद् भान्तिविलसितमेव ।

6. वियहवाक्ये माण्डशब्दस्य पूर्वनिपातादित्वपि मिताक्षरायन्तो दुष्टः वियहवाक्ये पूर्वनिपातनियमाभावात् समासे हि तत्त्वियमः शाब्दिकैः स्वर्थते न तु वियहवाक्ये इत्यादिविष्ट्वानेश्वरोक्तान्याये यद्युपर्यमन्वैतत्तां तत्परिष्टाराय पराक्रम्यते । युगपदधिकारत्वावचनता तावत् द्वन्द्वस्य वचनाधिकरणे वार्त्तिके तत्त्वरत्वे च महत्ता प्रवन्धेन निरस्ता । इतरेतरयोगोऽपि यदान्तरायन्यये द्वन्द्वाक्षब्ददीत्या प्रतीयते तेन पिण्डतौ धनभाजाविद्यनेन युगपदव्ययेऽपि वक्तुगत्वा तयोः क्रमेऽपि न वाक्यदीवः । सर्वेषां श्रीकरमिश्रादिभिल्लदभ्युपगमात् सर्वे समाधेयमिदम् । एकशेषाभावपक्षे च मातापितरौ मातरपितराविद्युच्च माण्डशब्दस्य पूर्वाववात् समासैकशेषयेत्स्व तुल्यप्रतीतिजगत्वाभावे विकल्पयोगाद्यापि तथा प्रतीतिरभ्युपेद्या वियहवाक्येष्वपि पूर्वनिपातनियमो नानुश्वासनसिङ्गलथापि आत्माद्वस्याद्यसिङ्गोऽख्येव । न हि क्षापि पिता च माता च पितराविति वियह द्वस्ते किन्तु माता पिता स्वपितराविद्येष्वाच्चरपि विश्वेषोऽप्यवस्थावकर इति चायेन तस्यापि विनिगमकर्ता समवतीत्वेनाश्वेतेन तथोक्तेः समवः ।

पितुः पुच्छनस्याधारण्यं मातुस्यस्याधारण्यमिति प्रवासनिरपि अनकलाया अस्यास्यद्वितीयेऽपि तदभिप्रायेष्वैक्षत्रा । साक्षात्यस्यास्याधारणे हि समन्वयते व्यपदेशप्रतीतिविज्ञानाविज्ञाने भवत एव तथागुभवात् ।

वाक्यार्थवेद्ये ज्ञानाभावे विमिति वसुक्षमं आश्रीयत इति श्रीकरोक्तिसु वचनान्तरे निरपेक्षसाम्यावगता ज्ञानपेक्षया सूतिचत्रिकाकारादिभिरप्यवशं निरक्षेव।

7. रुद्धिद्वयुवचनविरोधः परन्दुरात्मोद्विश्वते तत्त्वापि यथाद्वक्ति प्रतिविधीयते । गौरवप्रतिपादकानि वचनानि तावन्मातापिण्डविषयाणि विद्वानि दृष्टश्वन्ते । तानि विषयव्यवस्थावश्वमविरोधव्याप्तयानि । तथा हि । उपाधायाहश्वाचार्यं आचार्याणां शतम्भिता । सहस्रन्तु पितुर्माता गौरवेणातिरिच्छते । गर्भधारण्योषाभ्यान्तेन माता गर्दीयसीत्वादीनि मातुरभृहितल्पप्रतिपादकानि । तदेवारपि पिता अथेन् वीजप्राधान्यदर्शनादिवादिस्मृतिवचनानि । पित्राङ्गया परमुरामेण मातुः पित्रश्चित्तम् । रुद्धनाथेन कौशल्यया निवारितेनापि पित्राङ्गया राज्यं विहाय बनवास आठत इत्यादिपौराणिकान्तर्घदर्शनानि च पिण्डपूज्यताप्रत्यायकानि ।

तेषाच्चायमविरोधप्रकारः । यः पिता महागुरुलक्षणोपेतः स गुरुर्व्यः क्रियाः छात्वा वेदमस्मै प्रयच्छतीत्यादियोगीश्वरादिवचोभिः प्रतिपादितो माता च तदाङ्गावश्वर्त्तिलादिपत्रिवत्स्वप्रयोजकासमललक्ष्यरहिता । तदेवर्मध्ये मातुरपेक्षया पितैवाधिकाभृहितः । यच्च तु माताकृत्यादिवत्स्वपत्रिवतागुणोपेता पिता तु अम्भमाश्वप्रदः तत्र मातैव पितुरपेक्षयाभ्यधिकमान्या । चिरकारिकोपाख्यानादौ महाभास्तादप्येवमुपाख्यानस्तरसादयमर्थं उत्तीर्ण्यते । तदत्त्वापि मन्वादिवचनेष्वपुच्चपुच्चधनयहश्वाधिकारः ज्ञात्यित् मातुः प्रथमं ज्ञात्यितुः प्रतीयमान एवमेव व्यवस्थापयितुमर्हः । तथा हि । अनपत्न्यस्य पुच्छस्य माता दायमवाप्नुयात् । मातर्व्ययि च उत्तायां पितुर्माता हरेङ्गनमिति मनुः । भार्या सुतविहीनस्य तनयस्य वृत्तस्य च । माता रिक्षवहरीज्ञेया भाता वा तदनुशयेति रुद्धस्यतः । पुरुर्मनुरेव । पिता हरेदपुच्छस्य रिक्षं आतर एव वेति । तदभावे पिता तदभावे मातैति प्राग्दर्हितं रुद्धिद्वयुवचनादि । योगीश्वरवचने तु पितराविवश्च विज्ञानेश्वरोक्तरीत्या प्राक्षाता तदनु पिता । अन्यमते सम्मतविभागः पितुर्वा प्राथम्यमिति विप्रतिपत्तौ पितुरधिकमान्या या माता सा पितुरपेक्षया प्रथमाधिकारिणी । या तु पितुरफेक्षया च्यूनमानभावः सा पितुः पत्न्यात् । युक्तवैतत् । रुद्धादिसम्बिधानमकुर्बतः पितुरपेक्षया मातुरेवाधिकोपाख्यानादलाङ्गयहश्वम् । रुद्धादिसम्बिधानकर्तुः सु तस्य यावच्योवभरवपेक्षवादिनतिष्ठयित्वाकारकस्य धनयहश्वमिति सर्वमूलीना सर्वगिन्वन्वानांशादुःखातः भवतीत्वादि सुधीभिर्विभाष्यम् ।

#### PART V.

1. पित्रोरभावे भातरो भग्नमाजः । यश्चाप्यपुच्छनं भात्तगामि चपुच्छस्य चर्यातस्य भात्तगामि चर्यं तदभावे पितरपुरुषवादिवच्छैर्णीजसिवचनयोः । भातर एवेति मनोऽव पितृः प्राप्त् भात्तुर्वा भग्नयहश्वं प्रतीयते । मातर्व्ययि च उत्तायां पितुर्माता हरेङ्गनमिति च मनुवचने भात्तुर्वा प्राप्त् पित्रामङ्गाः । तथापि ज्ञमपरवेगोचर-

२४६ इदिव्युवचनाविरोधाय तेवा धनाधिकारमात्रपरत्वमेतत्क्रमाविरोधसूचनार्थमेव  
मनुगा भातर एव चेति पैठीनसिनायि ज्येष्ठा वा पलीति वाश्वः प्रयुक्तोउन्था तु स्व-  
काशाधिकारिषु तत्त्वयोगे उल्लङ्घनमयुक्तः स्यादिति मिताक्षराकारादयो वहवः ।

काश्यतदकारस्तु पलीभाष्टस्याले आज्ञाधिकारिष्वी साध्वी पली प्रथमाधिका-  
रिष्वी तदन्या तु भाष्टपिण्डतोऽनन्तरम् । पिण्डभाष्टस्याले तु पिण्डपितामहाद्युपार्जितं  
यदिभागेन पुचे संक्रान्तधनन्तरस्मिन्नपुचे प्रमीते पित्रोः पिण्डशाविरोधेन वर्त्तेनोपार्जित-  
तन्तत्पित्रोः सतोरपि भाष्ट्वामेवेत्याह ।

मम तु प्रतिभाति मातर्थ्यपि च वृत्तायामिति मनुवाक्ये । तदभावे मातापित-  
राविति शङ्खपैठीनसिवचनयोः । ततो दायमपुच्छस्य विभजेरन् सहेदराः । तु स्वा  
दुहितरो वापि ध्रियमाणाः पितापि वा । सवर्णां भातरो माता भाष्वी चेति यथा  
क्रमम् । तेवामभावे शङ्खीयुः कुख्यानां सहवासिन इति देवजबचने । सर्वंचापि  
वृत्तायां तदभावे यथाक्रममित्यादिपदैः क्रमप्रतीतेर्योगीश्वरवृहदिव्युवचनयोरेव  
क्रमपरत्वमितरेषान्तधिकारमात्रपरत्वेन तदविरोधेन तत्त्वानन्वेष्टियज्ञतिरिति  
समाधिर्नैव साधुः किन्तु चेत्रजादिपुच्छस्ये यथा स्मृतिवचनक्रमविपर्यास और-  
सानुकूल्यप्रातिकूल्यगुणवत्त्वागुणवत्त्वादिभिर्यवस्थापितत्वाचापि दायभागप्रकारये  
पुचादीनाम्निचाद्युपकारकात्मकीर्तनस्य गुणवत्त्वादिकीर्तनस्य वानन्यप्रयोजनत्वात्वात्वा-  
सनितात्तत्त्वत् । धनसाम्युपकारातिशयानन्विशयगुणवत्त्वागुणवत्त्वादिभिर्यथाचनं  
सर्वेऽपि क्रमविपर्यासः समधेयेऽन्ये तु समधयः कुरुक्षाशावलम्बनमात्रतु स्वा  
अनुपादेया इति । एवमयेऽपीति सर्वं सुखम् ।

2. भाष्ट्वपि प्रथमं सहेदराः । अनन्तरः सपिण्डाद्यलस्य तस्य धनम्भवे-  
दिति मनुगा । वहवो ज्ञातयो यस्य सकुख्या वान्धवात्मया । यस्त्वासङ्गततत्त्वेवा  
सोऽनपत्वधनं इतेदिति । वृहस्पतिना च । प्रत्यासत्त्वतिशयस्यैवासति विशेषवचने  
विनिगमकत्वेनोक्ते । भिन्नोदराणां माष्ट्वात्वविप्रकर्षात् । भातर इति सामाच्य-  
ग्रहणात्मोदराभावे भिन्नोदराः । इदमेव अक्षमुक्तं संग्रहकारेत् । सोदर्थाः सन्त्वसो-  
दर्थां भातरो द्विविधा यदि । विद्यमानेऽप्यसोदर्थे सोदर्थां धनभागिन इति ।

इति भाष्ट्वधिकारः ।

## PART VI.

1. भाष्ट्वावे तत्सुताः भाष्ट्वाभाष्ट्वयोः सादृशप्रतिपादनात् । अनेकपिण्डकात्मान्तु पिण्डो भाग-  
क्रम्यनेतिवचनाचानयोः पित्रभावे विभज्य धनयहणमस्त्विति वाच्म । विश्वुवचनाविरो-  
धात् तथाश्वस्य चश्वदार्थत्वात् । अन्यथा तथापदस्य पर्यञ्चायाम्बद्यसम्भवेन पित्रो-  
र्वाष्ट्वात्व विभज्यपहण्डमित्यपि कुतो न स्यात् । तच्चिद्विश्वुवचनविरोधात्मेवुच्यते  
सोऽपापि तु स्वः । अनेकपिण्डकात्मान्वितिवचने भाष्ट्वावे तेवामधिकारे सम्बन्धे

कस्तिंचिदप्यपुचे भातरि प्रमीते विद्यमानाणां आङ्गां सर्वेषान्तङ्गसम्बन्धे जाते तदिभागात् प्रागेव तत्त्वं शेष्यि यदि कस्तिंचूतक्षदा सत्पुचालाम्बित्वैः सह समविभागे प्रसक्ते खपित्विभागमेव ते विभव्य मट्टीयुर्वं सर्वे पित्तव्यसमित्वेतदर्थम् । आङ्गसत्त्वे तत्पुचालाम्बित्विभागतेऽनधिकारात् । पूर्वभावे परः पर इति योगीश्वरवचनासदमावे आङ्गपुचागमीति विष्णुवचने आङ्गपरमर्थकावत्यदेन आचभावाभिधानात् ।

2. आङ्गपुचेष्विप्रव्यासन्धतिश्चयात्पूर्वं सोदरभाङ्गाङ्गदमावे भिन्नोदरजाः । युक्तवैतत् । असोदरभाङ्गपुचो हि धनिनो मातरं विहाय खपितामहीविशिष्यस्य धनिपितुः पिण्डन्दातीति सोदरभाङ्गपुचाङ्गव्यक्तदनन्तरमेवाधिकारीति । त च सपलीकाले चयाणां आङ्गदेवतालात्पलमाचादीनामप्यस्ति तचानुप्रवेश इति वाचम् । माचादिश्चव्याणां सजननीपिठजननीपितामहजननीष्वेव सुख्यतात्तेनैव च रूपेण आङ्गनुप्रवेशस्तरम् । यथा स्मरन्ति । स्तेन भर्ता सह आङ्ग माता सुक्ष्मे स्वधाकरम् । पितामही च स्तेनैव स्तेनैव प्रपितामहीति । सपलमाचादीनामनुप्रवेशः प्रत्युत । अपुचा ये मृताः केचित्पुरुषा वा ख्यियोऽपि वा । तेषामपि च देवं स्यादेको-दिक्षुप्र पार्वत्यमिति स्मरणादायति । किञ्च । सपलोकदेवताकाशाङ्गविधेः पुचादि-सर्वजनाधिकारिकालात्पलमाचादीनाम्भानित्वान्नित्वानित्वसंयोगाविरोधान्माचादि-सापेक्षमेव सपलीकालविधायक्षमं युक्तं ।

इति आतुपुचाधिकारः ।

### PART VII.

1. आङ्गपुचाभावे गोचजाः । पूर्वोत्तमपित्तभाङ्गतसुतभिन्ना मट्टान्ते गोचजी-वर्द्यायात् ।

ते च पितामही खपित्वाः समानोदकाच्च । तच प्रथममितामही धनमाङ् । मातर्यपि च रूपार्थां पितुर्भाता इरेक्कनमिति मानवाभाचनन्तरमितामही धनग्रहये प्रसक्ते पित्रादीनां आङ्गसुतपर्यन्तानाम्भाङ्गमालालग्नुप्रवेशासम्भावादुत्तर्वेद्युपये तदुत्ताचनकारणाभावात्तदनन्तरमितामहादयेऽन्ये गोचजा इति विष्णानेश्वरः ।

2. अत्र सूतिशक्तिकायाङ्गोचजा इत्यत्र खलैपैक्षेष्वेण पुमांस एव गोचजा न तु खीर्ण्याः । विरूपैक्षेष्वेषो हि कुमुटावानय मिथुनश्चरित्याम इत्यादिवाक्षेपादिसमभिव्याहारादिप्रमाणान्तरावगततात्पर्ययेऽनिवन्धनो न चाच प्रमाणमस्ति । प्रत्युत आङ्गसुतादिसाहचर्यं पुङ्गोचजयस्य एव साधकमस्ति । किञ्च पलीदुष्टिचादीनां अङ्गप्राहिकया धनयाहकाधिकारोक्तेष्वात् ख्यियो निरिक्षिया चदायादा इति चुतेरक्षु तद्यतिरित्विषयता गोचजादिक्षाले तदिरोधादिरूपैक्षेष्वेक्षयनैव इत्युमही । अतद्य जीवतुचेभ्यः पिता दायं विभजेदिलापक्षमद्युक्त्याचक्षाणेन तद्वाव्यक्षारेव पुचेभ्य एव दायं विभजेत न खीभोदुष्टिरूप्य इत्युक्तोहां यद्यपि आङ्गपुचौ सहदुष्टिरूप्याभिमिति पार्विनिक्षरवात्पुचेभ्य इत्यत्र पुचाच्च दुष्टिरचेति

विष्णु विष्णैकाश्रेवेद दुष्टिद्वयामयाच पुच्छेऽनुप्रवेशः शस्त्रते वर्तुन्नथापि पुमांसो दा-  
यादा न क्षियः। तस्मात् क्षियेऽनिरिक्षिया अदायादा इति श्रुतेरिति श्रुतिविरोधाता-  
त्पर्यग्याहकमानाभावाच विष्णैकाश्रेवेदुश्चिठोऽप्याच न याज्ञ इति भाष्यकाराभिप्रायः।

जीमूतवाहनेऽपि याज्ञवल्लेन च पितामहिदौहित्यापि तद्वोचनातस्य पितृ-  
दानगमन्तर्थं क्षेत्राधिकारप्रतिपत्त्यर्थं गोचरप्रदयहृणं ज्ञातम्। सपिष्ठस्त्रीवाम्  
चुदासार्थं तासामद्वोचनातस्यात्। अतएव अर्हति स्त्रीवनुदत्तौ बौधायनः। न  
दायमिरिक्षिया अदायादाच क्षियो मता इति श्रुतेरिति। न दायमर्हति स्त्रीवन्वयः।  
पलगादीनामवधिकारोविष्णैकाश्रेवेदविवरज्ञ इति।

3. तत्र साधुः। मन्मादिवच्छेषु प्राणिलिखितेषु पितामहां धनाधिकारस्य इड़-  
याहिक्यैव विधानात्तदेवाक्षरतया योगीश्वरवचनस्त्रापि विष्णैकाश्रेवेद तत्संयहेऽपि  
श्रुतेस्तदन्यपरत्वेनाविरोधात्।

जीमूतवाहनस्य तु मात्रधिकारविधारप्रकावे पितामहसनामात्पूर्वभितामहाच  
परतः पितामहां धनाधिकारः। पितृः परतोमात्रधिकारवत्। याज्ञवल्लेन  
मात्रधिकारप्रदर्शनेनैव पितृवादिभ्यः पूर्वभितामहिपितामहारधिकारस्य स्त्रिचित-  
त्वात्पृथग्नेत्रात् इति वदतोऽनुच्छेद सपिष्ठस्त्रीचुदासार्थङ्गोचरप्रदयहृणं वदतः पूर्वपर-  
विरोधानुसन्धानमपि नास्ति। इड़याहिक्या योगीश्वरवचने पितामहाः पितृवादि-  
पलगादीनामवधिकारस्य तुत्यस्तात्तदेवादायादभुतिप्रस्तुतेरविरोधात्।

विद्यारथ्य श्रीचरणोक्तप्राणिलिखिते तस्मान्निरिक्षिया इत्यादि श्रुतिवाख्याने  
तु स्त्रीवान्दायप्रदेवप्रतिवेदकात्मकेवास्याः श्रुतेन्नाल्लिति न वा इत्या न चोत्तरम्।  
परन्तु बौधायनसुनिवचनविरोधे तद्वाख्यानश्चात्प्रस्तुप्रदयताम्। अल्लु वा इन्द्रियप्रदस्य  
वाक्यवेदात्प्राप्तामान्यपरता तथापि दायादत्प्राप्ताभावाभिधानावलम्बनस्यान्यस्यास्त्वाहिराला-  
म्बनस्त्रुतेचासम्भवत्यिज्ञवत्तीर्त्तनानुपपत्तिप्रस्तुतप्रतिवेदकात्प्रस्तुतमभावात्। तस्माद्वर्त्ते-  
गाविज्ञातेन इतेन वृक्षाङ्केवत्तेवेति ध्येयम्।

4. पितामहां अभावे पितामहादयः सगोचाः सपिष्ठा धनभाजः। भिन्न-  
गोचारां सपिष्ठानां चनुशब्देन यद्वात्।

तत्रापि पितृवचनामभावे पितामही पितामहः पितृवाक्त्युचाच क्षेत्राधिकार-  
भाजः। पितामहसनामाभावे प्रधितामही प्रतिज्ञामहित्तदभावाता तत्पूरवचेवेदमांसप-  
मात्प्राप्तामगोचारां सपिष्ठानामपुच्छनभावाम्।

सपिष्ठाभावे समानोदक्षानाम्। ते च सपिष्ठानामुपरि सप्त। अभगामज्ञाना-  
धिकारा वा। वयाह मनुः। सपिष्ठस्ता तु पुरवे सप्तमे विविवर्तते। समानोदक्षभा-  
वलु निवर्त्तेताचतुर्दशात्। जन्मनाश्चोः श्रुतेरेके तत्परं गोचसुच्छत इति। विद्यावच्छे-  
वन्युस्त्रुत्यपदाभ्यां सपिष्ठस्त्रीचौ इत्येते इति आगेव प्रतिपादितम्। समानोदक्षा  
अपि प्रवातप्रतिज्ञानेव धनभाजः।

5. समानोदक्षाभावे चन्द्रवे धनभाजः। चन्द्रवच्छ चिविधा चात्प्रस्तुतः पितृ-

बन्धवो मातृबन्धवस्तु । तथा च स्मृतिः । आत्मपितृबस्तुः पुत्रा आत्ममातृबस्तुः सुताः । आत्ममातुलपुत्राच्च विशेषा स्थानवाच्यवाः । पितुः पितृबस्तुः पुत्राः पितुर्मातृबस्तुः सुताः । पितुर्मातुलपुत्राच्च विशेषाः पितृबन्धवा । मातुः पितृबस्तुः पुत्रा मातुर्मातृबस्तुः सुताः । मातुर्मातुलपुत्राच्च विशेषा मातृबन्धवा इति । तचापि प्रत्यासन्नामात्म-व्यथममातृबन्धवलादनन्तरपितृबन्धवलादनुमातृबन्धव इति ज्ञामः ।

मनुस्मृतौ तदभावे सकुल्यः स्थानाचार्यः शिष्य एव वेत्यत्र सकुल्यशब्देन सगोचसमानोदकानां मातुलादीनां बन्धुत्यस्य च यहवां योगीश्वरवचनेऽपि बन्धुपदेन मातुलालक्षणमन्यथा मातुलादीनामयहवामेव प्रसञ्चेतेति तत्पूजागान्धिकारस्तः प्रत्यासन्नामान्तेषामेव स नेति महदंनौचित्यमापयेत ।

6. बन्धुनामभावे आचार्योधनभाक् । यद्यपि योगीश्वरवचस्याचार्योनोपासत्त्वात् शापि शिष्य उपासत्तः प्रधानतमः प्रत्यासन्नतमस्थाचार्य चैचित्यादुपलक्षणीयः । आचार्यः शिष्य एववेति मनुना । पुत्राभावे प्रत्यासन्नः सपिण्डलदभावे आचार्यकृदभावेऽन्तेषामीत्यापत्त्वेन च स्पृष्टमेवाचार्योभावे शिष्यस्थाधिकारवेदनाच ।

7. शिष्याभावे सब्रह्मचारी सहाधारी धनभाक् । यसैकसमादाचार्योदुपनयनाध्ययने ।

8. सब्रह्मचारिणोभावे ब्राह्मणदव्यव्यतिरिक्तं राजा गृह्णोयत् । सहाधार्यपर्यन्तमधिकारसुका तदभावे ब्राह्मणधनवर्जं राजगामीति प्रागुदाहृतवशिष्ठवचनात् । सर्वेषामयभावे तु ब्राह्मणा रिक्षभागिनः । चैविद्याः शुचयेदान्तास्तथा धर्मो न हीयते । अहार्यं ब्राह्मणधनं राजा निवृत्तिं ख्यतिः । इतरेषान्तु वर्णानां सर्वाभावे ह्रेष्टपृष्ठ इति मनुवचनाच्च ।

9. ब्राह्मणदव्यं सब्रह्मचारिपर्यन्ताभावे ओचिदो ब्राह्मणः प्रथमं गृह्णाति । तदभावे ब्राह्मणमात्रम् । यथाह गौतमः । ओचिदा ब्राह्मणानपवस्य रिक्षभजेरन्निति । ब्राह्मणमात्रन्तु मनुवचने ब्राह्मणमात्रयहवात् । नारदेऽपि । ब्राह्मणार्थस्य तत्त्वाश्च दायादखेष्व कस्तु । ब्राह्मणस्यैव दातव्यमेनस्त्री स्थान्त्रिप्राप्यथेति ।

### PART VIII.

1. पुत्रादीनां पत्नीपर्यन्तालक्षणादयहरावां वानप्रस्थादिविषयेऽपवादमाह योगीश्वरः । वानप्रस्थयतिब्रह्मचारिणां रिक्षभागिनः । क्रमेषाचार्यसच्छिष्यधर्मं जात्रेकतीर्थिन इति । ब्रह्मचार्यं त्रिष्ठिको यतिसाहचर्यात् । तेनेष्वपुर्वाद्यस्य धनं पुत्रादिदौषित्रान्तानामसम्भवात्पित्रादय उक्तक्रमेष्व गृह्णोयुः ।

क्रमस्थात्र प्रतिलोमो ष्ठेयः । तथा च नैषिकस्य भूतस्य धनमाचार्यस्य यतेः सच्छिष्यस्य वानप्रस्थस्य धर्मभात्रेकतीर्थिनः ।

धर्मभाता प्रतिपद्मो भाता । तीर्थशब्दस्यात्मवाचित्वादेकतीर्थेकात्रमी । धर्मभाता चासावेकतीर्थं चेत्यर्थः ।

शिष्यस्य सत्वन्तु न सदृशत्वम् । दुर्बलपुचादीनामपि धनानधिकारस्य प्रमाणान्तरैर्जैव प्राप्तत्वात् । तच वक्षते । किञ्चित्थात्मशस्त्राच्चवृत्तधारवृत्तर्थानुकूलनक्षमत्वात्मा याद्यम् ।

मदनरत्नकारल्लु । वानप्रस्थधनमाचार्यो गृहीयाच्छ्वेति विष्णुवचनं शिखित्वानुकौमयेव ज्ञानं मन्त्रावानप्रस्थधनमाचार्याभावे शिष्यो गृहीयादित्याह ।

2. नन्दनंशस्त्राच्चमान्तरगता इति विश्वादिवचनं शिकादीनान्वयस्वन्वाभावस्य वक्ष्यमात्मात्मजनयहृष्टाधिकारिकथनमचानुपपत्तेऽपि । न च रिक्षयद्यहृष्टस्य तेषां विश्वादिभिर्वेष्टेऽपि प्रकाशन्तरार्जिततदीयधनाधिकारप्रतिपादकमिदम्भविष्यतीति वाच्यम् । ब्रह्मचारी यतिज्ञैव पक्षाद्वासाभिनावुभाविति स्मृते ब्रह्मचारिकास्य प्रतियहृदिनिवेष्टात् । अनिच्योभिन्नुरिति यतेव्वस्त्रियस्यैव निवेदादाधनमिति चेत् ।

3. वानप्रस्थस्य तत्त्वत् अङ्गोमासस्य वस्त्रां वा तथा संवत्सरस्य वा । अर्थस्य नियमं कुर्यात्तुतमाश्वयुजे व्यजेदिति । वचनाद्वौजनादिपर्यामयत्विद्विज्ञनसंयहेऽप्येव । यतेवपि । कौपीनाश्वदनार्थं हि वासेवै विभूत्याद्यतिः । योगसम्भारभेदांश्च गृहीयात्मादुके तर्थेति । वचनाद्वयपुस्तकादि किञ्चिदस्येव । नैछिक्षापि श्रीरथ्याचार्यं वक्षादिसम्बन्धं आवश्यकः । तेन मृतानामेषां तत्त्वेन यात्ममित्वपेच्छान्दायादान्तररप्तवादेनेतेऽधिकारिक उच्चत इति ।

## CHAPTER IV.

1. एष संहितिविभागः । तच मनुः । विभक्ताः सह जीवको विभवेत्तु युनर्यदि । समस्तच विभागः स्यात् व्यैषं तच न विद्यत इति । एष समविभागनियमादेव विषमविभागप्रकारनिरासे सिद्धे व्यैषानात् न विद्यत इति युनर्वचनं व्यैषादिष्टत एव विषमविभागो न भवति वक्ष्यधनसंसर्गानुरेक्षी तु विषमविभागो भवत्वेति स्मृत्वनार्थम् ।

केचित्तु संहितप्रयोपचयांश्वव्यैषादिष्टतोविषमविभागो भवत्वेव । संहितप्रयविभागलु सम एवेकेतत्त्वापयनाय व्यैषमिति वाक्यादेष्व इत्याज्ञः ।

तत्र एताहृष्टवस्थाया अस्मादप्तीतेः । समस्तच विभागः स्यादिव्युक्त्या इवोपचयेऽपि साम्बन्धियमप्तीतेः ।

2. संहितविभागेऽप्यविभक्तविभागवत्संहितप्रयाविरोधेण विद्यादिष्टस्याविभाग्यत्वमुख्यमेव प्राप्तमपवदति द्वृश्यतिः । संहितान्तु यः क्षिदिष्टापौर्यादिगाधिकम् । प्राप्तोति तस्य दातप्रयोग्यांश्च व्येवाः समांश्विनः ।

3. संहिता च पितादिनेव कर्तव्या नान्येन विभक्तो यः पुनः पितैतादि प्राप्तिष्ठितद्वृश्यतिवचनादिति वहवः ।

वयम्नूपवक्ष्यमित्वादिप्रहृष्टविभागिप्रणितम् ।

५. अविभक्तिभागवत्संहित्यपि भिषोविभागकरणात् प्राग्योन्मतस्य  
पुच्छः प्रभीतिपिण्डकाणान् पिण्डोभागकस्यनेतिकरणात् सखपिंशं विभज्य गृह्णीयुः ।

यस्य तु संहितिनोन्मतस्य पुचादये न सन्ति तदनग्रहणे पलीबादिवचनात्य-  
लग्नादीनां प्राप्ते तदपवादनेन स्वर्णातस्य शृणुप्रस्तौवेत्वगुह्यतावाह योगीन्द्रः संहितिनसु  
संहक्षीति । तु शृण्वदत्यव्याप्तिवादः । अपुत्रस्य संहितेनोन्मतस्य धनं संहक्षीये गृह्णीयाज्ञ  
पलगादिरिवर्थः । एतेन पलगायपुत्रधनग्रहणाधिकारिगते भावधिकारावसरे वचन-  
मिदं प्रवर्तते इति आचक्षाणो जीभूतवाहने भावतरवेत्ववेयम् ।

अस्यायपवादः । चोदरस्य तु चोदरः । दद्याचापहरेचाशङ्कातस्य च न्मतस्य-  
चेति । संहितिः संहक्षीयस्याचापि सम्बन्धः । तथा चायमर्थः । चोदरः संहक्षी संह-  
हितः चोदरस्य आतस्य पुचरुपेषोत्तमाप्तिन्दद्यात्तपुत्राय दद्यादिति यावत् ।  
न्मतस्य पुचादिवर्थलुपेषाप्तिवेतांश्चमपहरेदामसात्मुर्व्यात् स्यमेव गृह्णीयादिवर्थः ।  
पदद्यानुषङ्गं विनेव आत्माने तु शृण्वदकायात्मस्य पूर्वापवादत्वं भव्येत । एव च चोद-  
राचोदरसंहितसङ्घावे चोदर एव संहक्षी चोदरसंहितेनग्रहणाधिकारी न  
भिन्नोदर इति पूर्वोक्तापवादः । यच तु भिन्नोदर एव संहक्षी चोदराच्च न । तच  
इयोर्विभज्य पुचादिरित्वात्मधनग्रहणाधिकारी । अन्योदर्थलु संहक्षी नान्योदर्थो  
धनं त् । असंहक्षीपि चाद्यात्मंहूतोनान्यमात्रं इति । अत्रात्मंहूतिपरं काका-  
द्धिवर्त्व्यात्मसार्वद्योर्हपि संबधते । तथा संहक्षु इत्यपि । तच पर्वार्द्धं एकोदरसंहक्षुः  
चोदर इत्यर्थकं उत्तरार्द्धं तु संहितार्थकं । अन्यमात्रं इत्यनन्तरस्येवकारोऽन्या-  
र्थार्थः । ततस्यायमर्थः । अन्योदर्थोऽचोदरोऽपि संहक्षी चेत्क्षनं इरेत् । असंहक्षी  
चेदन्योदर्थो न इरेत् । तथा चायव्यव्यतिरेकप्रदर्शनेन भिन्नोदरस्य संहितमेवैकं  
धनग्रहणात्माणं न आत्ममात्रमित्युक्तं भवति । तथा संहक्षुः चोदरोऽसंहक्षीपि  
चित्क्षनं इरेत्क्षमुत संहक्षी । संहक्षुः संहक्षीप्यन्यमात्रं एवैकं धनक्षु इरेत् ।  
किन्तु चोदरेणासंहितानापि सह विभज्य गृह्णीयात् । अत्रायं पर्ववसितोऽर्थः ।  
असंहितिचोदरे संहितभिन्नोदरे च सत्यपुत्रमातुर्दं चोदरत्वसंहितलुपैकैकाधन-  
ग्रहणाधिकारात्मयोगात्ममं विभज्य गृह्णीयाताम् । चोदरोऽपि चेत्संहक्षी चारबद्ययोगेन  
वक्षव्यव्यात्मव्यं स एव गृह्णीयादिति ।

अत्र चैकैकनियमेनार्थादपरंकारविनियातसिद्धावपि द्वीपत्रवाय पुनरुक्ति-  
दातः । उभयथापि वाक्यमुपत्तेः ।

पुणिङ्गत्वं संहक्षुतोत्तमादविवक्षितमतश्व भगवा चोदरभिनीनामपि तदन-  
ग्रहणमुक्तम् । यथाह । विभक्ताः सह जीवनो विभजेत् पुनर्व्यदीति संहितिभाग-  
व्यक्तम् । येवा च्येषुः कनिष्ठो वा चीयेतांश्चप्रदानतः । वियेतान्यतरोवापि तस्य भागो  
न जुप्यते । चोदर्व्या विभजेयुत्तं समेत्वं सहिताः समम् । भातरो ये च संहक्षु भगि-  
व्यक्तं सनाभव्य इति । येवा संहितिनां मध्येऽन्यतरः संहक्षी च्येषुः कनिष्ठोऽपि मध्य-  
भावांश्चप्रदानते चीयेतान्यधिकारांश्चप्रदाने स्यात् । सार्वविमहितसात्मकमन्यर्थं तस्मिः ।

विभागकाले पातिवेगाच्चमान्तरपरियहेष्व वा । जियेत वाऽग्रहीतभागस्य । तर्हि सत्यं भागो न ल्पयते एथगुड्डरणीयः । स च प्रथमं तत्पुच्छादिभ्योदेयः । तदभावे शोदर्धा भातरोऽसंख्टा अपि । समेव देशान्तरगतात्स्त आगत्वं सहिता मिजिताः । ये च भातरो भिन्नोदरा अपि संख्टाः संख्टिनः सनाभयोमृतस्य सहितारा भगिन्यज्ञं समसमैषवध्येण विभजेयुविभज्य गृह्णयुदित्वर्थः । अत्र शोदरभातरभगिनीनामसंसर्गेऽपि संसर्गे च भिन्नोदराणामपि धनाधिकारमभिदधता मनुना योगीश्वरोत्त एवार्थः स्वद्भुक्तो भवति ।

5. अथ श्रीकरः । संख्टिनस्तु संख्टीत्यसासेदरसंख्टिमात्रविषये-उन्यानपेक्षत्वात् शोदरस्य तु शोदर इत्यसायसंख्टसेदरमात्रविषये तथात्माद-शोदरे संख्टिनि शोदरे चासंख्टिन्युभयोः प्राप्तौ यदि इयमेव प्रवर्तते तदान्योऽन्य-सापेक्षायेऽरभयोर्विधायकत्वं स्यात् । नचेकत्वं सापेक्षनिरपेक्षोभयरूपतया विधायकत्वं विधिवैषम्यापादकमुचितम् । यथा इयोः प्रणयन्तीत्यस्य न वैश्वदेव उत्तरवेदिमित्ता-दिनिष्ठेक्षतविकल्पसापेक्षं पर्वद्ये विधानमन्यपर्वद्ये तु निरपेक्षमिति सप्तमाधिकरणे विधिवैषम्यभयादन्यथा सिङ्गान्तितम् । तथा चाशोदरे संख्टिन्यसंख्टिनि च शोदरे उभयोरप्रवृत्तौ न कोउपि तज्जनं गृह्णीयादित्वापतेत् । अतः संख्टिन-स्त्रियनेन संख्टिभ्यने संख्टिनोऽधिकार उक्ते तदपवादोऽयं शोदरस्य त्विति । तथा च संख्टिनोऽप्यसेदरस्य शोदरे संख्टित्वरहितेऽपि सति नाधिकार इत्याह ।

तच्चीमांसानयतत्वानालोचननिबन्धनमभिधत्तम् । नहि इयोः क्वचिद्विप्रेक्षयोः प्रवृत्तयोः शास्त्रयोः क्वचिदुभयविषयसमावेशवशादेकत्र प्रवृत्तिमात्रेव वैरूप्यमवति । तथा सति केवलोऽकाटप्रतिस्त्रोचपक्षेदे निरपेक्षयोः सर्वसदाक्षिण्यादाक्षिण्यशास्त्र-येत्युगपदुभयापक्षेदे प्रवृत्तभावादिरोधाभावेन किञ्चेन बाध्यत इति विचारो निर्मैषः स्यादपक्षेदनये । तस्मात् क्वचिदिधक्षत्वाभगिरपेक्षविधानं क्वचित्प्रदाधसापेक्षं चेत्तदा वैरूप्यं यथोपात्रवपन्तीत्यच्च प्राञ्छिरूपितम् । अन्यथा चतुर्हेत्वां पौर्वमासीमभिमृगेत्यच्छेवाचाममावास्यामित्यनयोरपांशुयागामीषोभीर्विषय रेक्षदध्यैक्षपयेविषये चैकैकाशः प्रवृत्तयोरभयसाधारण्यहितिविषयसमावेशेऽप्येकमपि न प्रवर्तते ।

यदपि स्वयमुपवर्णितं संख्टिनस्त्रियस्यापवादः शोदरस्य त्वितादिरिति । तदत्त्वसम्बद्धं । विनिगमकाभावेन वैपदोत्त्वस्यापि सम्भवात् । पौर्वपर्वमात्रस्याप्रयोज-कात्वात् । तत्त्वान्योदर्थवचनं संख्टिनस्त्रियसैव विवरणार्थमित्युक्तं । तेन वचोभङ्गानर्थ-क्षमेव तस्योक्ताम् । किञ्च शोदरेऽसंख्टिनि संख्टाशेदरापवादार्थं शोदरवचनस्य वर्णनात्मोदराशेदरयेऽरभयोरप्यसंख्टित्वे प्रवृत्तभावात् तुत्याधिकारो वा इयोरपि स्यात् । अथाचापि शोदरवचनमेव प्रवर्तते तद्देवकच्च संख्टिवचनवाधसापेक्षमव्यज्ञतु निरपेक्षमिति प्रवृत्त तवैव विधिवैरूप्यम् । यथा सौमिकी वेदिविधिर्दैक्षण्यादिवित्तदेशप्राप्तदर्शपौर्वमासिकवेदिवाधेन विधियेत तर्हि तत्त्वातिदेशवाधसापेक्षक्षिद्धिरन्यच तत्प्रियपेक्ष इति वैरूप्यादवेदिमद्विषयकात्ममेव तस्य अवस्थापितं तत्त्वे ।

असम्भते तु वास्त्रातरीबा दयोभिन्नविषयमेनानर्थक्षमैरुप्ययोर्प्रसक्तिरिति-  
ज्ञातं वित्तरेत् ।

6. स्वतिचक्रिकाकारस्त्वाह । येवां व्येषः कनिष्ठोवेत्यादिमनुवचने चशब्देन  
सोदरस्त्राभमगिन्यसोदरसंख्याभाद्याभितरेतरयुक्तानां विभागकर्त्तायाः समेत्व-  
सहितशब्दाभामवगतेर्योगीश्वरचने च संख्यित्वोदरसद्ग्रावे भिन्नोदरस्त्वानधिकारा-  
वगतेरलिं तावदनयोर्विरोधे तद्विरोधफ्रिहारार्थं केचिदेवं मानवं वाचक्षते ।  
समस्यामां चोदरा यदि संख्यालक्षदा तरेव मृष्टोयुर्नासंख्यितः सोदरा अपि ।  
संख्योदरामावे सर्वे चोदराः समेत्व मिलित्वा सहिताः समप्रधानमावेन  
समस्यामाधिकं विभजेत् चोदराभामावे समाभयो भगिन्यसामयमावेऽज्ञोदर्व्या  
इति । तदेतदनेकाभ्याहारदेवादतिक्रियत्वाचोपेक्षणीयम् । विज्ञानेश्वरवास्त्रानमपि  
मावदसंवादादायान्योदर्व्यन्तु संख्यी नान्योदर्व्यो धनं हरेदिति पाठेन योगीश्वर-  
वचनस्य यत्तदप्याहुर्यथाहारादिना क्रियमवक्ताप्रतीयमानार्थक्षम्भूतप्रश्नाविज्ञित-  
मात्रम् । तस्माद्यथाप्रतीयमानार्थक्षम्भूतेतेव मनुयोगीश्वरवाक्ययोर्विविधवस्त्रद्वावे  
मनुवचनं संख्यासंख्यानां आद्यां भगिनोगाम्य विभव्य यद्यत्वं चेष्यति । योगीश्वर-  
वचन्तु केवलस्यावरसद्ग्रावे केवलतदितरव्यसद्ग्रावे वा तदित्यस्तु यद्य-  
त्वं संख्यानान्तु तद्वेत् । भूमिं गृह्णन्तसंख्याः प्रमृष्टोयुर्यथांश्चत इति प्रजापति-  
सृते । व्रद्यमिति गोवजिवद्व्यायेन प्रवक्ष्य दिपद्वचतुर्यदादिरूपस्य अङ्गमव्यस्य  
यद्यत्वम् । संख्यानां भिन्नोदराभामिति शेषः । योगीश्वरवचने नान्योदर्व्यादिति  
पाठः । तस्मात् केवलस्यावरसद्ग्रावे केवलस्यामसद्ग्रावे च योगीश्वरवचनादसंख्यो-  
ऽपि चोदरसद्ग्रीयात् तु संख्योऽपि भिन्नोदरः । उभयविधधनसद्ग्रावे तु  
प्रजापतिवचनोत्तमवस्थया संख्याः सोदरा भाद्यभगिन्यः संख्या भिन्नोदराच वि-  
भव्य मृष्टीयः । मनुवचनस्यायेतदर्थतैवेति ।

तदसत् । अध्याहारक्रियतादिदेवस्य तवप्यनपायात् । प्रजापतिवचनोत्तमव-  
स्याया विज्ञानेश्वरीयवास्त्रानेऽप्यविरोधात् । अतएव मदगरलक्षता तदास्त्रानमभु-  
येत्वेव प्रजापतिवचनमपि व्यवस्थापकलया यठितम् । प्रव्युत भवस्त्रास्याने योगीश्वर-  
वचने पौनवक्ष्यं दुष्प्रियरमापद्यते । अन्योदर्व्यन्तु संख्यी नान्योदर्व्योधनं हरेदि-  
त्वानेत्तरस्यैवार्थस्य संख्योगान्यमाद्य इत्वानेगान्यूनानतिरित्यस्य प्रतिपाद्यात् । मान-  
वसंवादिनोऽप्युत्तमस्त्रस्यार्थस्य लोकेनापि वस्तु शक्तव्ये मूलभूतभुत्यन्तरस्त्रस्यनागौरवा-  
वादस्यार्थान्तरस्य कल्पयितुमनुचितत्वात् ।

7. वादवस्त्राभूतिठीकायां शूकपादिः । अन्योदर्व्यः संख्यी नान्योदर्व्यस्यं  
मृष्टीयात् । असंख्यपि चोदरसद्ग्रीयात् । न तु संख्याः साप्तम्याता । नान्योदर्व्यो  
धनं हरेदिति पाठे अन्योदर्व्यः सन् संख्यपि धनं न मृष्टोयादिति वास्त्रा । असं-  
ख्यित्वोदराधिकारार्थमिदं वचनमतो । न पुनर्वक्तव्याह ।

ततु श्रीकरमतसमानयोगक्षेमम् । एताकरस्तावाह यसु कल्पतरौ नान्योदर्थं इरेदिति पाठो दृष्टते स मूलभूतयाज्ञवल्क्यमिताच्चरापारिजातह्लाद्युध्यमेषु नान्योदर्थ्ये धनं इरेदिति पाठदर्शनात्मदनुसारिव्याख्यानदर्शनात् जिपिप्रमादश्वेति ।

8. दायतत्त्वकारल्लु खेदरेऽसंखषिति संखषित्यसेदरे च कतरस्तावद् गृह्णीयात् । एवं खेदरासेदरयोः संखषितोः सद्ग्रावे कतर इत्यच प्रथम आह अन्योदर्थस्तिति । अन्योदर्थः पुनः संखषी नन् गृह्णीयान्योदर्थमात्रः । किन्त्यसंखषित्यपि पूर्ववचनस्यसेदरपदानुष्ठात् खेदरो गृह्णीयात् । तेनैकत्र विषये पूर्ववचनोक्तसेदरत्वसंखषित्योरेकाङ्गः सम्बन्धेन तुत्यतादिभव्यग्रहणमेतदुभयसत्त्वे वा खेदरस्तासंखषितोऽनुत्त्वरूपत्वान्नेति । द्वितीय आह संखषी नान्यमात्रज इति । खेदरे संखष्टे सत्यन्यमात्रजः संखषोऽपि न गृह्णीयात् । अर्थात्तत्र संखषी खेदर एव गृह्णीयात् । संखषुत्त्वाविशेषेऽपि खेदरत्वेन तस्यैव वक्तव्यादित्याह ।

तदपि मिताच्छरादिसम्बायेव व्याख्यानाकौशलव्यधिकम् ।

9. यदा तु संखषः पिता पितॄवा वा नाक्ति तदाऽसंखषभिन्नोदरो गृह्णीयात् । तदभावे त्वसंखषः पिता । तदभावे तत्पती । तथा च शक्तः । स्वर्णातस्य श्वापुत्रस्य भात्तगामि इत्यं तदभावे पितरौ इतेयातां व्येष्ठा वा पत्नीति । स्वर्णातस्यापुत्रस्य संखषुत्त्वमावे भिन्नोदरासंखषुभात्तगामि इत्यमित्यर्थः । तेन संखषुभगविषये यथाच्छितमेवेदं वा वचनमिति ऋतिचन्द्रिकामदनरत्नकारावाहतुः ।

संखषुभात्तविषयमेवैतत्तेन पितॄपत्नोऽतदभाव इति न विद्वमिति मिताच्छराकारादयः ।

ऋतिचन्द्रिकायां शृङ्खलवचने व्येष्ठग्रहणं सुसंयतत्वादिगुणवत्यकथनार्थं न तु मध्यमादिनिवृत्यर्थम् । पुनरपि तदभाव इति वत्तव्ये वाश्वदः प्रयुक्तः पद्मासाम्यात् । तथा हि । वाश्वदादिकल्पः प्रतीयते । न चाच खाघरूपे वल्लुनि तुत्यवद्विकल्पः सम्भवति न हि वल्लुनि विकल्पन्ते इति न्यायस्य शास्त्रसिद्धत्वात् उपपत्तिसिद्धत्वाच । तस्मादत्र वाश्वदभावविकल्पावगते: पद्मासाम्यमस्येव । एवत्वायं क्रमः भागभावे पिता तदभावे माता तदभावे व्येष्ठा पत्नीति ।

मदनरत्ने तु मातापित्रोर्बिपरीतत्तमः । मिताच्छरोत्तम्यायादिभक्तासंखषविषयविषयमिति वाच्यते । विमलोत्तम्यायायिकापत्नीदुहितादिकमेत्तु वाचनिकमेत्ता वाच्यते । अस्मिन् ज्ञाने कास्यचिद्यायस्याभावादिचितिक इत्यायं ज्ञानः । नारदोऽपि । व्यते पत्नौ तु मार्काण्डुभात्तपितॄमात्राः । सर्वे सपित्वात् धनं विभवेयुर्यथांश्च इति । अस्मार्थः ।

भाव्याः पत्रः । अवाहपित्तमादकाः याः पत्रुर्भाहपित्तमातरकादभावविविष्टा इतर्थः ।  
अत इन्हसमाते भावपेक्षयाभ्यर्हितपित्तादिपद्यूर्बनिपातं परित्वच्च वैपरीत्येन  
समातरचनां तुर्बता नारदेन संख्यापुच्छ्रव्यं प्रथमं आद्गामि तदभावे पित्तगामि  
तदभावे माद्गामि तदभावे दृश्यपत्रमिगामीति दर्शितम् ।

• दवष संदृष्टपत्रीनां मुखगौणपुचाभावे न प्रथमं दायहरनं किञ्चु संदृष्टि-  
सोदरभिन्नोदरभाटपिठमाटूबामप्यभावे इति ब्रह्मद्यम् । सर्वे सपिण्डस्तिवादेष्य-  
मर्यः । संदृष्टापुचस्य ये भाटपिठमाटूतिरिक्ताः सपिण्डा भाटपुचादयते सधनं  
पूर्वमपुचधनेन सह सपिचादिगा संदृष्टं तदूङ्कं तत्यत्रीमिः सह यथांश्चतो भाट-  
पुचादां भाचांश्चो भार्यादां भर्जंश्च इत्येवमंश्चानतिक्रमेण विभजेयुरिति ।

१०. पत्रप्रभावे संख्यापुच्छां तद्गिनी जमते । तथा च वृहस्पतिः । या तस्य भगिनी का तु ततोऽग्नं जब्युमर्हति । अनपत्नस्य धर्मोऽयमभार्यापित्रकस्य च । अमातृकस्य चेति चप्रव्याधः ।

11. भगिन्यभवे केवलाः सपिष्ठा अनन्तराः सपिष्ठारूद्धायं विभजेरन्  
यथांश्चतः तद्यायं तस्य तस्य धनम्भवेदिति मनुक्षप्रबासत्पिक्लेगा जभेरन्। प्रतिपदी-  
क्लानामभावात्। तथा च स एव। उत्तेऽनुपत्वो उत्तार्यच्छेदम्भात्पिठमात्रकः। सर्वे  
सपिष्ठारूद्धायं विभजेरन्, यथांश्चतः॥ तद्यायं संख्यिदायम्। उत्तेऽनुपत्व इत्यादे:  
प्रतिपदीरूद्धायं धनम्भाहिरहितचेदित्यर्थः।

सपिद्धामाये तु विभक्तवद्विषयम् प्रागुत्क्रमेण प्रत्य-  
संचितास्तम्येण चमानोदिकादिगमीति ब्रह्मम् । संदृढव्यमधिकाय सपिद्धेभ्य ऊँ  
विशेषाम्बिरिति ।

१२. ननु सत्यपि पल्लगादौ वचनामृतसंहितिधनस्य संहितिभावादियाश्वत्वत्  
संहितासंहित्युच्चसद्ग्राहेऽपि पितॄधनस्यायंतरवचनवात् संहितियुच्चमात्रयाश्वत्वम-  
स्थिति चेत् । न । अपुच्छेति पूर्ववचनस्यालुष्णादपुच्छसंहितिरवस्था धनयहया-  
जारवत्वात् संहितिन्युच्चेत्यापुच्छत्वाभावात् संहितिन्युच्चत्वस्याप्रवृत्तेर्विभवेन्  
सुताः पितॄोरिति वचनातिपञ्चे पुच्छयोर्द्योरचापि समभागभागित्वम् । प्राक्कानः  
खांशः परं संहित्युच्चेष्व सुक्षावशिष्टः स्फुर्युज्जरणीयः । पितॄुर्बालदानीं विद्य-  
मानोऽप्तः संहितासंसुक्षाभ्यां विमल्य याश्वः । न च संसुक्षितिवत्त्वापुच्छयदा-  
युक्त्वां मात्रिति वाचम् । सपुच्छसंसुक्षितिभावादिधनेऽपि पुच्छादिवाधेन तदंशस्य  
भावादियाश्वतापत्तौ सवकादेशीयानादिष्ववहारविरोधापत्तौ । अन्यथा पुच्छदपुच्छ-  
साधारदस्यापुच्छमात्रविवेषयपत्तौ वादिवाक्यापत्तौ इकात्मानुपपत्तेष्ठाद्विकृतुशब्दविरोधाप-  
त्तेष्व । न च भावादिसंसुक्षित एवायं विशेषवं ज्ञावन्त्वात् । पुच्छसंहितिन्यु न  
ज्ञावन्त्वाभावात् असम्भाव । तस्मवे व्यभिचारे च स्थाई विशेषवमर्थविद्यभि-  
युक्तोऽप्तेरिति वाचम् । स्फुर्युज्जरादियाभावादेतत्र च वाचे व्याख्यादिशेषवपुरस्तारेव  
व्याख्यादिय दस्युपत्तारेव विधिपत्तौ विशेषवद्विताव्याप्तिवाक्याप्तिविवन्धनविधि-

वैष्णवस्थल्यवाक्षभेदापत्तेः । किञ्च पित्रादिवस्त्वाम्बे पुच्छादिकमेवापतितत्वादिविश्लिं  
प्रयोगं न तु संख्यविश्लिंगमपि गौरवात् । तच सर्वेषां संख्यानामसंख्यानाम्  
तुख्यमिति सर्वेषामेव पुच्छादीनामविश्लेषेव तज्जग्यहवसुचितम् । न च विभागेन  
पित्रादिवस्त्वाद्वैत्तापत्तेः । सर्वेषु पुच्छे विभागात्मकसंख्यादीनामेव तच  
धनाधिकारापत्तेः । प्रयुतापलम्बेन इतीतेन च विभागोत्तरमपि पित्रापुच्छेः  
परस्यरथनाधिकारप्रतिपादनात् । यथाहतुलौ । जीवज्ञेव वा विभव्य वनमाश्रयेत्  
द्वजाम्बम् वा मच्छेत् स्वर्वेन वा संविभव्य भूयिष्ठमादाय वसेत् यदुपदेशेत् पुण्येष्यो  
गङ्गीयात् जीवात् विभवेदिति । द्वजाम्बम् पारित्रायतम् । उपदेशेद्वस्याभावेन  
चीवेत् ।

विभक्तेभ्ये तु सति पूर्वविभक्तानां पुच्छादीपि पित्रधनाधिकारो उत्तर्यति-  
वचनेनपोद्यते । यथाह सः । अनीश्वाः पर्वजाः पित्रोर्ज्ञातुभैर्गे विभक्ताजाः । पुच्छैः तद्व  
विभक्तेन पित्रा यत् स्वयमर्जितम् । विभक्तजस्य तत् सर्वमनीश्वाः पर्वजाः सूताः ।  
यथा धने तथार्जेच दानाधानकार्येषु च । परस्यरमनीश्वास्ते सुक्ताश्चौचोदक्षक्रियामिति ॥

13. संख्याधनहारकेव तत्स्मिन्द्यः परिपाचनीयात्मकन्यात्म विवाहपर्यन्तं  
पोषकीयाः संख्यात्माक्षेत्रात्मतः शङ्खनारदौ संख्यिंगं प्रकल्प्य । आद्वामप्रजाः प्रेया-  
त्मस्त्रिचेत् प्रव्रजेत वा । विभवेन् धनस्तस्य श्वेषात्मे स्त्रीधनं विना । भरतवास्य  
कुर्वीरन् स्त्रीवामाजीवनक्षयात् । रक्षन्ति इत्यां मनुष्येऽधिक्षिन्दृशितरासु च । या  
तस्य दुष्टिता तस्याः पित्रोऽप्तो भरवे मतः । आसंख्याराद्वरेद्वागं परतो विभृयात्प-  
तिरिति । इतरासु भर्त्यव्यामरक्षनीयु दुर्व्याप्तियात् । आसंख्यारादि-  
त्वभिविधावाऽत् तेन विवाहकरत्यमपि काम्भते ।

इति संख्यविभागः ।

## CHAPTER V.

### PART I.

1. अथ स्त्रीधनविभागं वक्त्रान्तस्त्रूपन्तावद्विरुद्ध्यते । तच मनुः । अध्यग्न-  
श्चावहगिकम्भज्ञच प्रोतिकार्मविः । आद्वामाद्विप्रापासं विश्विधं स्त्रीधनं सूतमिति ॥  
विश्विधमितिन्द्रूपसंख्याद्यवच्छेदपराधिक्षयनिराकाय । अतएव योगीन्द्ररेण पित्रमाद्व-  
पतिभाद्वदसमध्यमुग्रपागतम् आधिवेदगिकाद्यच स्त्रीधनं परिकीर्तितम् ॥ इत्याद्वश्व-  
उपासः । विष्णुनापि बड्डिकाणि स्त्रीधनान्युक्ताणि । स यथाह । पित्रमाद्वसुतभाद्वद-  
मध्यमुग्रपागतम् । आधिवेदनिकं बन्धुदत्तं शुखमन्याद्येयमिति स्त्रीधनमिति ॥ नारदः ।  
अध्यप्रधावहगिकम्भर्त्यव्यापीयैव च । आद्वदत्तं पित्रभावं विश्विधं स्त्रीधनं सूत-  
मिति ॥ विश्विधं माणववदेव वास्तेष्यम् ।

2. स्त्रीधनशब्दसायं वौगिकः स्त्रीखामिकन्वनमिति । न तु पारिभाविकः । येगसम्बन्धे परिभावाया अव्याख्यतात् । अतएव येगीश्वरेष्व रिक्षकायादिसाधारण-खलोपायसंयहायाथपदं प्रयुक्तम् ।

ननु च अचित् स्त्रीधनलनिवेदोऽनुपपत्त एवं सति स्थात् । नहि स्त्रीखामिकात्मं लभ निवेदुःशब्दते । वाक्यात् । वथाह काव्यायनः । तत्र सोपधि यद्यत्तं यत्र येग-वश्नेन वा । पित्रा भाजायत्वा पत्ना न तत् स्त्रीधनसुच्यत इति । उपधिक्तस्वादा-वेदेदमस्य दत्तं तत्या धार्यमज्ञानारादि नान्यदेतिनियमस्तत्पूर्वकदत्तं सोपधि । येगस्य न दायादानां कन्यायै दत्तमिदन्तज्ञाध्यं विभाष्यमिति । शिल्पप्राप्तं सख्यादिभ्यः प्रीत्वा प्राप्तमन्तदपि न स्त्रीधनमित्याह स एव । प्राप्तं शिल्पैकु यत् क्रित्वित्वा चैव यद्यत्तः । भर्तुः स्त्राव्यनादा तत्र श्रेवन्तु स्त्रीधनं स्मृतमिति । पारिभाविकत्वे भाजादिदत्तत्वेन प्राप्तं स्त्रीधनं प्रतिविध्यते । तेनैतस्माद्द्विवेदे पित्रादिदत्तं शिल्प्यादि-प्राप्तमित्रं वा स्त्रीधनमिति परिभाव्यत इतिचेत् ।

उच्यते । नान् स्त्रीधनत्वनिवेदः । किंतु तत्कार्यविभागादिवेदः । अत-एवेततरस्त्रोके तत्र भर्तुः स्त्राव्यनिवृत्तम् । भर्तुङ्कदिनिवेदे त्यात्मज्ञ लिया-इत्यर्थः । प्रथमस्त्रोकेतु स्त्रीखलनिवेदोऽपि सम्भवति उपधियेगपद्येवपादानात् । तादृशदाने च स्त्राव्यनादावस्य प्रसिद्धत्वात् । येगाधर्मनविक्रीतं येगदानप्रतियहम् । यत्र चाप्युपधिमयस्तत्पूर्वं विनिवर्तयेदिति मनुवचनात् । भार्या पुच्छ दासस्य चय-यवाद्यनाः स्मृताः । यत्ते समधिगच्छन्ति यस्य ते तस्य तद्विमित्यपि वचनम्भा-र्याविवये शिल्प्यादिप्राप्तपरमेव । एकामूलाकाव्यनाणावदात् ।

3. स्वधर्मादिशस्त्रूपग्रिह्णितं काव्यायनेन । विवाहकाले यत् स्त्रीभो दीयते श्वमित्रशिघ्रौ । तद्धर्ममित्रात् सद्भिः स्त्रीधनं परिकीर्तितम् । यत्पुनर्ज्ञभते नारी नीयमाना पितुर्हहात् । स्वधावहनिकद्वाम स्त्रीधनलदुदाहतम् । प्रीत्वा दत्तं तु यत्किञ्चिच्छावा वा अशुरेष्व वा । पादवन्दनिकचैव प्रीतिदत्तन्दुष्टते । विवाहात्परतो यत् तत्वं भर्तुङ्कुपात् लिया । स्वधावेयन्तु तत्वोक्तं यज्ञव्यं स्त्रु-कात्तथा । गृहोपस्करवाङ्मानां दीद्वाभरवर्कमवाम् । मूल्यं चव्यन्तु यत्किञ्चिच्चत्पूर्वां परिकीर्तितम् । ऊङ्या कन्याया वापि पत्नुः पित्रगृहेऽपि वा । भातुः सकाङ्गात्यिचोर्वा चब्दं सौदायिकं स्ततम् । भर्तुः सकाङ्गादिति कन्यतर्ज्ञादौ शाठः । स्वधर्मादिशस्त्रालु येगरुद्वाकाङ्गाहस्त्रीधनस्व प्रयेगात् । गृहोपस्करवादीनां वन्मूल्यं कन्यार्पकोपाचित्वेन वरादिभ्यः कन्याभरवरूपेष्व गृहाते तच्छुल्लभिति मदगरन्ते आत्मातम् । मित्राङ्गारायान्तु यह गृहीत्वा कन्या दीयते तच्छुल्लभित्युक्तम् । उमयचापि गृहीत्वा पित्रादीनां कन्याया इदमित्युद्देशो विवक्षितः । स्वधावत्स्वामीवेन स्त्रीधनलव्यवदेश्वत्वानुपपत्तेः । जीमूतवाहनेन तु जर्मिनाभिति पठित्वा गृहादिकर्मिभिः शिल्पिमित्रात्मकरवेभर्जादिप्रेरवार्यं लियै वदुत्तोच-दानं तच्छुल्यं तदेव मूल्यव्याप्तवर्थत्वादिति आत्मातम् । मुनज्ञोत्तम् । यदानेनु-

भर्तुर्गुणे शुल्कनात्परिकीर्तिंतमिति आसेतां वा । भर्तुर्गुणमनार्थमुलोचादि यदृतं तच्छुल्कमित्यर्थं इति । तदुभयमपि स्त्रीधनमित्यं भवत्येव तस्य एव दत्ततादिति तत्र स्त्रीधनतत्त्वपदेष्टोऽन्यस्त्रीधनवत् सुगम एव ।

आधिवेदनिकं स्त्रीधनतत्त्वविवाहकाले पूर्वभार्यायै यदीयते । यदाह वाच्च-वस्त्रः । अधिविष्णुव्यै दद्यादाधिवेदनिकं समम् । न दत्तं स्त्रीधनं यासान्दत्ते तर्वैः प्रकल्पयेदिति ॥

4. पित्रादिभिर्जीवनार्थं स्त्रीधो धनदाने विशेषमाह आत्मायनः । पितृ-मातृपतिभातृशातिभिः स्त्रीधनं क्षियै । यथाशक्ता दिसाइखाहातव्यं स्त्रावराद्वते । स्त्रावरेतरधनं यथाशक्ति कार्योपयासइखदृष्टयर्थात् देयमित्यर्थः । आसेऽपि । दिस-ईच्छः परो दायः क्षियै देयो धनस्य तु । आदिसइखादिति काव्यायनेन पर इति च आसेनोत्तोरितोऽधिकं धनिनापि न स्त्रीधो देयमिति दर्शितम् । अथस्य नियमः प्रतिवत्त्वरमसत्त्वादर्पणे ज्ञेयस्तेनानुकृतस्तरेषु जीवनार्थं दीयमानमितोऽधिकमपि भवति चेत् देषः । जीवनार्थलाहानस्य यावच्चीवस्य दिसाइखमात्रेण तद्विर्बन्धासम्भवात् ।

5. स्त्रीधनेऽपि भर्तुर्गुणतिमन्तरेष्वा स्त्रीजाग्र खातन्त्रमित्याह भगुः । न निर्हारं क्षियः कुरुः कुटुम्बाइकमध्यकात् । खकादपि च वित्ताद्विस्त्रस्य भर्तुर्गात्मयेति ॥ निर्हारो व्ययः ।

क्षियत् तु स्त्रीधने तासां खातन्त्रमस्ति । यदाह सौदायिकस्त्रृपमुक्ता आत्मायनः । सौदायिकं धनं प्राप्य स्त्रीजां खातन्त्रमित्यते । यस्तात्तदाच्छ्रांस्यार्थं तैर्हत्तमु-पशीवनम् । सौदायिके सदा स्त्रीजां खातन्त्रं परिकीर्तिम् । विक्रये चैव दाने च यथेष्वं स्त्रावरेष्वपि ॥

भर्तुर्गते तु स्त्रावरेतरश्व खातन्त्रमित्याह नारदः । भर्ता प्रीतेन यदृतं क्षियै तस्मिन् भृतेऽपि तत् । सा यथाकाममन्त्रीयाहयादा स्त्रावराद्वते । स्त्रावरे भर्तुर्गते क्षिया निवासाद्युपभोगमात्रं न दानविक्रयादिकमित्यर्थः । अपुचा श्वयनं भर्तुरित्यादि काव्यायनवचोऽपि भर्तुर्गतस्त्रावरविषयमेव नारदैकवाक्यतयेति चेचित् । अस्माभिस्तु पली दुष्टितर इति आस्त्रावसरेऽस्य विषयः प्रपञ्चितः ।

6. युश्वावामपि कस्मिन्नपि स्त्रीधने न खातन्त्रं खाम्याभावादित्याह आत्मायनः । न भर्ता नैव च सुतो न पिता आतरो न च । आदाने वा विसर्गे वा स्त्रीधने प्रभविष्यतः । यदि व्येकतरोऽप्येषां स्त्रीधनं मद्यवेदु वकात् । सदृढिकं स दायः स्त्राइखदृष्टैव समाप्त्यात् । तदेव यथनुज्ञाय भक्षयेत् प्रीतिपूर्वकम् । मूलमेव तदा हायो यदा स धनवान् भवेत् । अथ चेत्सुदिमार्यः स्त्राव च तां भजते पुनः । प्रीत्वा विष्णुमपि चेत् प्रतिदाक्षं स तदु वकात् । यासाच्छादनवासानमुद्देश्ये यत्र योगितः । तत्र स्त्रमाददीत स्त्री विभागं रिक्विनान्तया ॥

क्षिया धनं गृहीत्वा यद्यपरभार्यया सङ्ग वसत्वेनास्त्रावमानीते तदा गृहीतं तद्वन् रात्रा वकादायः । भक्षाच्छादनगिवासान् यदि भर्ता न ददाति तदा तेऽपि

किया वजाइ ग्राह्याकात्म्यात् अर्थं वा ग्राह्यमिति खोकषयस्यात् चेदित्यस्यार्थः । इतमपि तस्या दीप्तदात्रिके वेऽथं दुष्टा पुनः किमपि खीधनं न आभत इत्याह स एव । अपकारक्षियायुक्ता निर्वर्णी चार्यग्राहिका । अभिभावतता या च खीधनं न तु सार्वति । नाईतीत्यनेन तथा कव्यमप्याश्रित्य ग्राह्यमिति द्वचितम् । अपकारक्षियायुक्ता सदा भर्त्यप्रतिकूलाचरणपदा । निर्मर्यादार्थग्राहिकेवपि पाठः ।

7. देवजः । दुर्जिताभरतं शुश्कं जाभञ्ज खीधनं भवेत् । भोक्त्री तत् स्वय-  
भेदेन परिनाईत्यनापदि । दृष्टा भोक्त्रे च भोगे च खियै दशात् सहृदिकमिति ।  
दुर्जितर्जनार्थं पित्रादिना इत्यमिति खूतिचक्रिकायात् । मदगरते तु दत्तिरिति  
पठितम् । दत्तिर्जीवनार्थं पित्रादिभिर्दत्तमिति आख्यातच । जाभो गौर्यादि-  
प्रीत्यर्थं यज्ञाभ्यते कुलचित् । दृष्टा आपदमन्तरेष । भोक्त्रास्यागोदानमिति यत्वत् ।  
अग्नुज्ञातस्यागभोगविषयभेदत् । तदनुज्ञया त्वनापद्यपि न देष्वः । स्वयभेदेव-  
कारः स्वापनानां युदासार्थः । भर्त्युदासस्य परिनाईतीत्यनेनाभिधानात् । भर्त्य-  
युदाये ततो वहिरङ्गानां आत्मादीनां युदासस्यापि दख्णाप्रिक्या सिङ्गतात् ।  
अग्नापदीत्यभिधानादापदि न देष्वः । अतएव पुत्रार्तिहरते चापि खोधनमभोक्त्र-  
मर्ईतीति तस्यैव वाक्यशेषः । पतिरित्यनुष्ठापः । पुत्रयह्यं कुटुम्बोपकालकं तस्यार्ति-  
र्भशाश्वादभावग्निमित्ता पीडा तस्या हरये । चश्चाश्वादन्यक्षिण्यपि भग्नाभावग्निमित्ते  
सङ्घटे खीधनमग्नुज्ञातमपि पतिस्खलं भोक्त्रुज्ञाईतीत्यर्थः ।

ननु परवते लागभोगयोः स्यान्यनुज्ञया विना कथमर्जता वाधितानेन वेऽथते ।  
अग्नुज्ञायान्त्यनापद्यपि न विरोधः । उच्चते । वचनवकासाद्युग्मविषये व्यये स्वत्वमेव  
तस्य तचेवदेष्वः । अतएव योगीश्वरोऽपि । दुर्भिक्षे धर्मकार्ये च आधौ सम्पत्ति-  
रोधके । दृष्टीतं खीधनं भर्ता नाकामो दातुमर्ईति । धर्मकार्ये आवश्यके निवे-  
नेमित्तिके च । सम्पत्तिरोधके दख्णाद्यर्थं दाक्षावरोधे ज्ञाते । वाचस्यतिलु सम्पत्ति-  
रोधक इति आधिविशेषणं कार्यानुष्ठानवाधक इति च तदर्थं इत्याह । नाकामो  
दातुमर्ईतीत्यपि दारिक्यादिङ्गतदानासामर्थ्ये वेऽथ । सति तु सामर्थ्ये दुर्भिक्षादिदृष्टी-  
तमप्यवश्यं देयम् । एतावतैव वचनोपपत्तौ सामर्थ्येऽप्यदानमित्येतत्यस्य कल्पयितुमन-  
र्हत्यात् । पतियह्यकादापद्यपि पत्न्युरेव पत्नीधनयह्याधिकारो प्रतिदानस्तेष्या  
नान्यस्येति ज्ञेयम् ।

8. भर्ता दातुं प्रतिश्रुतं भार्यायै तस्मिन् मृते पुत्रादिभिक्षाद्यै देयमित्याह  
स एव । भर्ता प्रतिश्रुतं देयमवश्यत् खीधनं सुतैरिति । सुतयह्यं पौत्रप्रपौत्रयो-  
दापकालकवद्यविधिधानात् । अनेन खीधने जीवन्यात्मस्या सुतानां अनग्ना  
स्त्वेऽपि नार्जित विभाग इति गम्यते ।

एवं खीधनमुक्तात् ।

## PART II.

१. अथ तदिभागो गिरुप्यते । तत्र मनः । जनन्दा संस्थितायान् सम्ब-  
सर्वे सहेदराः । भजेन् मात्राकं रिक्षं भगिन्नवा सनाभयः ॥ अथ इन्द्रसमाना-  
र्थकच्छब्दोपादानात् सोदरव्याघ्रभगिनीन् मिलिताना मात्राधराधिकारो गच्छते ।  
सोदरयश्चां भिन्नोदरव्याघ्रार्थः ।

देवता: । सामान्यं पुच्चवान्धारा वृत्ताथा खीधनं स्त्रियाम् । अप्रजाया इरेकु भर्ता  
माता भाता पितापि वा ॥ अत तु दग्धस्त्रै अवदात्युत्तारां कन्यानाम् सहाधिकारः  
प्रतीयते ।

इदसाम्बाधेयपतिप्रोतिदत्तदिविधखीधनविवरम् । यथाह मनुरेव । अन्याधे-  
यस्य यद्दत्तं पत्वा भीतेन चैव यत् । पत्वौ जीवति छतायाः प्रजायास्तद्गम्भेत् ।  
अन्याधेयं पूर्वलक्षितं यस्य पत्वा भीता दत्तं तत् स्त्रीधनं छतायाः मृतायाः क्षियाः  
प्रजा पुच्छुहित्तरुणा तस्याः स्त्रीभवति । पत्वौ जीवतीत्वगादरे सप्तमी । जीवत्तमपि  
प्रतिमनाहृत्येवर्थः । तस्यानधिकारत्त्वं चेति यावत् । अत्र च प्रजाया इति सामा-  
न्याभिधानात् खोपुसप्रजायाः समस्यावगतेलुत्त्वदिभव्य माहधनग्रहणं । न पुनः  
पूर्वं भगिनीनां तदभावे आद्युत्तामिति ।

भगिन्यस्य मनुवचनेनुडा याद्याः । तथा च दृहस्पतिः । स्त्रीधरं खाद-  
पत्वानां दुहिता च तदंशिलो । अप्रत्ता चेत् समूडा तु जभते मानमात्राम् ॥  
अपत्वानां पुत्राद्याम् दुहितुः एथगुपादानात् । तदंशिलो पुत्रसमाधिलो । मानमात्र-  
कमिति गौरवार्थं तदन्सारेण लिमपि जभते न तु पुत्रसमाधिलित्यर्थः ।

अप्रत्यानामभावे प्रत्यानामपि समर्थकायां भाटसमभागित्वमित्याह कात्यायनः ।  
भगिन्यो बान्धवैः सार्ज्जं विभजेरन् समर्थकाः । विभागकाले दौहित्रेभ्योऽपि किञ्चि-  
द्देवम् । तथा च मनुः । यास्तासां खुद्दुहितरत्नासामपि यथार्हतः । मातामद्वा-  
धनालिङ्गिष्ठदेयं प्रीतिपूर्वकम् । यथार्हत इत्युपयोगदारिक्षणाद्यपेक्षयेत्वर्थः । न च  
दौहित्रीयां तदा अनस्तामावात् किमिति दानमिति वाच्यम् । यथा पैष्ठके  
पुञ्जस्त्वे कन्यानां दायनर्हत्वेऽपि वचनबधात् दीयांश्चादानमेवमत्ताप्युपपत्तेः । अतएव  
प्रीतिपूर्वकमित्युक्तम् । प्रीतिपूर्वकत्वबधनादेवानावश्यकत्वमपि स्फुचितमत्त  
पतिताः स्वरदित्यव इति दोषकीर्तनादावश्यकत्वमिति भेदः ।

२. यौतकनु कुमारीभामेव माद्धनम् न पुचाकां गापि प्रसादुहित्याभिकाह मगुरेव। मातुल्य यौतकं यत् स्यात् कुमारीभागद्य स इति। युमिअवद्यति धात्वनुसारदिवाहकाले एकासनोपविष्टयोर्बधूरयोर्यदान्वदीयते तद्युतयोरिदं यौतकमिति शुत्पत्त्वा यौतकमित्यते। केचित् विवाहे स्त्रीपुंसयोरेक-शरीरतया मित्रता भवति। अस्थिभिरस्त्रीनि मासैमांसानि त्वचा त्वचमिति श्रुतेः। भर्तुर्बध्यगादिभिरस्यादीन्येकीमवक्तीत्वर्थ इत्याङ्गः। यदेतद् इद्यन्तव तदस्तु इद्यं मम यदेतद् इद्यं मम तदस्तु इद्यन्तवेति अन्न विष्णुदिवाष्टे

मित्रतेवन्ये । युतयोर्योतकमिति निघण्डौ । यौतकं यौतुकम् तदिति कोषाद्यौतुकमितिः पाठः । भर्तृहृषभवात्युग्मनतया पिण्डहृषब्धं मातृधनं यौतुकम् । यौतश्चस्यामित्रमप्यर्थः । युमित्रामित्रमवेदिति धातुपाठात् । युतसिद्धाविति प्रयोगादेति देवसाम्यात् । तदस्त् पिण्डहृषभवात्युग्मनतया भर्तृहृषब्धं यौतकमित्रस्यापि विनिगमकाभावे वत्तु इच्छवेनास्य कल्पनामाचत्वात् ।

कुमारीवामनेकत्वे समं स्यादशुतत्वादिति न्यायेन सम एव विभागो विशेषाच्चवात् ।

3. रत्नलिंगिधिभिं मातृधनं दुष्टिद्वाम् । तत्रापि प्रथममप्रत्यानां तदभावे प्रत्यानां तत्रापि प्रथममप्रतिष्ठितानां तदभावे प्रतिष्ठितानां सध्वानां तदभावे विश्वानाम् । तथा च गौतमः । स्त्रीधनं दुष्टिद्वामप्रत्यानामप्रतिष्ठितानाच्चेति । अप्रतिष्ठिता अनपत्न्या निर्जना दुर्भगा विधवा वेष्यपरार्केव कल्पतरकारेव च वास्त्रात्म् । प्रात्मनं इयमेव विज्ञानेश्वरादिनिः । अच च स्त्रीधनमिति सामान्योत्तिरपि चित्विधप्रागुत्तम्भीष्मलभिन्नविषया । सृतिचक्रिकामदनरक्षयोरेवमुक्तम् ।

4. जीमूतवाहनस्मातेभद्राचार्याभ्यान्तु प्रागुत्तम् गौतमवचनं । मातुर्दुष्टिरोड्भावे दुष्टिद्वामां तदन्यय इति नारदवचनम् । दुष्टिद्वामभावे तु रिक्ष्यं पुचस्य तद्वेत् इति काव्याधनवचनम् । मातुर्दुष्टिरोड्भावे तु रिक्ष्यं पुचस्य तद्वेत् इति योगेश्वरवचनम् । एवमन्यान्यपि स्त्रीधनस्य दुष्टिद्वामस्तप्रदायि सृतिवचनाग्नि प्रागुत्तमन्वादिवचनविरोधाभ्यानुलु यौतकमिति प्रागुत्तमगुच्छनानुरोधाभ्यानातुः पारिक्षयं खियो विभजेरन्निति वाचिकानुसाराच यौतकमाचविषयादोत्तम् । पारिक्षयं परिक्षयनकर्व यौतकमिति यावदिति ताभ्यां वास्त्रात्म् । कक्षतरौ विवादचिन्तामन्त्रौ च पारिक्षयमिति पट्टिला स्त्रीपरिच्छदादर्ढकञ्जितिकारीति वास्त्रात्म् ।

### 5. विज्ञानेश्वरात्म् ।

सर्वमेव स्त्रीधनं पुच्छादिवचनेऽपि प्रथमं दुष्टिद्वौहित्रीदौहित्रगामि तदभावे पुच्छादिगामि । अपेक्षाःस्त्रीधनन्तु अवस्थापविष्यते । मातुर्दुष्टिरोड्भावाचार्याभ्यतेऽन्यय इति योगेश्वरवचने दुष्टिद्वामन्वाच्य इवनेन न परामृष्टते किञ्चु दौहित्रीदौहित्रावपि । मातुर्दुष्टिरोड्भावे दुष्टिद्वामां तदन्यय इति नारदवचनात् । अच तदन्यय इवनेन तद्वेत्ने दुष्टिरोड्भावाः परामृष्टते । तथा च दुष्टिन्ययो दौहित्रीदौहित्रस्यः । तत्रापि प्रथमं दौहित्री तदभावे दौहित्रः । दुष्टिद्वामप्रसूता चेदिति वस्त्रमावयोगीश्वरवचने दुष्टिद्वामेन दुष्टिद्वौहितरो दृष्ट्वान्ते । साक्षादुष्टिद्वामां मातुर्दुष्टिर इवच तेजेवोत्तमात् पुनर्वापापत्तेः । दुष्टिद्वामन्यय-इति सामान्योत्ते दौहित्रादिकारोऽपि ।

पुच्छादिकारस्त्वा विभजेरन् सुताः पिण्डोर्हर्ड्यम्बन्दव्यं समभिलक्ष पिण्डोरिक्षे-कार्येवाक्षते तच प्रागेव प्रणितम् । ताभ्य छत्तेऽन्यय इवचार्याभ्यवदेन योग्यतया वस्त्रान्तमाहपदाव्यवात् दुष्टिद्वामस्य मुगुपादानात् पुच्छादिरेव ग्रह्णते । दुष्टिभावे तद्विकारप्रतिपादनार्थं च यौवनवत्तम् ।

जगन्नां संस्थितायानिवति मनुवचनस्य त्ययमर्थः । सर्वे सहेदरा माहौलं  
रिक्षं साधिकारावसरे समं भजेत् सनाभयः केदरा भगिन्यश्च साधिकारावसरे ।  
न तु इयोऽपि सम्भय विभजेत् त्रिवर्थः । इतरेतरयोगस्य इन्द्रैकशेषयोरभावाद्ग्रन्तीतेः ।  
चश्चव्यस्य तु विभागकर्त्त्वान्वयमात्रेणाप्यपपत्तेः । यथा देवदत्तः क्वां त्रुष्ट्याद्य-  
दत्तस्येवुक्ते नेतरेतरयोगग्रन्तीतिः । वाक्यान्तरेव च इयोरपि माहौधनाधिकारे  
प्राप्तेऽपि समभित्वनेनात्रोऽरादिविषमविभागनिवृत्यर्थं वचनम् ।

सोदरसनाभियहणमसोदरभावभगिनीनिवृत्यर्थम् । अतएवाभमजातिस्त्रीधनं  
भिन्नोदरापि प्रकृत्यातीयसपलीपुष्टी तदभावे च तदपत्यं गृह्णातीत्युक्तं मनुगा ।  
ख्लियात्तु यद्वेद्वित्तमित्ता दत्तं कथस्तु । ब्राह्मणी तद्वरेत्वन्ता तदपत्यस्य वा  
भवेदिति ॥ अतानपवद्वित्यादिजातीयख्लिया इति विवक्षितं ब्राह्मणीपदस्त्रोतमजा-  
त्युपलक्ष्यम् । अप्रजस्त्रीधनं भर्तुरित्यस्य चात्मपवादः । अतस्मानपवदेशाधनं  
द्वित्यादुहिता अनपवद्वित्याधनस्य वैश्वादुहिता गृह्णाति । तदभावे तदपत्यानि तद-  
भावेऽप्रजस्त्रीधनभित्वस्य तत्र प्रवृत्तिः ।

तस्मात् स्त्रीधने सापत्वायाः प्राग् दुहित्याधिकारस्तदनु पुत्रादीनाभिवाङ्गः ।

6. अत्र जीमूतवाहनः । मनुष्यस्यतिश्छलिखितवचनेषु इन्द्रस्यापि अवका-  
त्संवादेन तत्रापि चश्चव्यस्येतरयोगार्थकत्वौचित्याद् भावभगिनीनां सोदराणां वि-  
भव्य सहैव धनग्रहणं युक्तम् । किञ्च । केवलदुहित्यामेव सकलमालधनाधिकारे  
यौतके विशेषवचनमनर्थकम् । न च कुमारीपदोपादानावस्तदुहित्यादुत्थर्थन्तदिति  
युक्तम् । तद्यात्ततोः सर्वस्त्रीधनं एव गौतमादिवचनेषुक्त्वात् । कुमार्यमावे प्रताद्य-  
धिकारस्यात्मायवर्जनीयत्वात् । तस्मात्पुत्रोऽस्त्वद्विवदधिकार एव मन्त्राद्यभिप्रेतो-  
ऽध्यगादिस्त्रीधनविषयो यौतकविषयस्तु पुत्रोमात्राधिकार इयेव अवस्था । अन्याप्ते  
यपतिप्रीतिदत्तमात्रग्रहणन्तु मनुवचनान्तरेऽध्यगाद्युपक्षक्षमितरथा यौतके पुण्यग-  
रभस्यानर्थकापत्तेदित्याह ।

दायतात्प्रकाशदादीनामप्यतदेव मतं ।

7. अत्रेदं प्रतिभाति अन्यादेयादिग्रहवस्त्रोपवक्ष्यते प्रमाणाभावात्तदुभय-  
व्यतिरिक्तसर्वमालधने दुहित्याधिकारः प्रथमतदनु पुत्राधिकारः । यौतके विशेष-  
वचनन्तु प्रतादिग्रहवर्थम् । अन्यत्रापि सा समैवेति चेत्प्रत्यक्षम् । किञ्चन्तु । न नियता  
यौतके तु नियता । तेज यौतकं कुमार्यमावे विवाहमेदेन स्त्रीधनमर्जादीनामेव  
भवति न प्रतादीनाभिति सूतिचन्द्रिकाकारादीनामात्रयः ।

विज्ञानेश्वराचार्याकानवयमिप्रायः । सामान्यतः स्त्रीधनमात्रस्य दुहित्याद्य-  
तावेष्वरमनवयासिद्धवचनानुरोधेन सङ्कोचः कर्त्तव्यः । न च मन्त्रादिवचनमनवयात-  
स्त्रियं पुत्रप्रवादाणां सहाधिकारप्रतिपादनम् । पुत्राधिकारमात्रप्रतिपादनमात्रपर-  
त्यात् । न च चश्चदिन्द्राभ्यां सहाधिकारः । विभागकर्त्त्वान्वयेनापि तदुपपत्तेः ।

अन्यथा पितराविलादौ मातापित्रोल्लदिव्यत इत्वादौ च इन्द्रैकशेषबद्वे सकल-  
निवन्धसम्मतः क्रमे मातापित्रो न स्थात् । विशुवचनाद्यनुरोधात्तत्र शब्दान्वयसाहि-  
तमात्रेव तदुपपतिरर्थक्रमस्वन्यथाप्यविवरज्ञ इत्युच्यते । तद्यंतापि तात्प्र ऋतेऽन्यवः ।  
दुहितृबामभावे तु रिक्तं पुच्छे तद्भवेदित्वादियेगीश्वरकात्यावगचनावगतार्थ-  
क्रमान्वयाभावे इन्द्रचश्वादीनां शब्दान्वयसाहित्यमात्रेवोपपतिरस्तु न तु तदगु-  
रोधेन तेषामेवान्वयविवरत्वम् । सिद्धे सहाधिकारे तेषां सङ्गोचकात्सङ्गोचे चैषां सहा-  
धिकारपरत्वनिष्ठय इतीतरेतरात्मयत्वेति ।

अन्वाधेयादौ विशेषवचनमनर्थकमिति चेत् । न । यौतके अन्तिकालात्तादिमत-  
वदेव सार्थकत्वात् । अन्वाधेययाहक्षस्योपज्ञात्वतया प्रजामात्राधिकारे तेज प्रतिपादिते  
जगन्नां संस्थितात्याक्षिकादिवचनैः साम्यादिविधानमित्रेवं सर्वेषां सार्थकत्वात् ।  
सकात्तर्व्यं सुखमिति ।

श्रीविद्यारण्याश्रीचरवैषु सृतिश्चिकामिताक्षरयोद्योतप्यनुसारेव इथमपि  
क्षितित्वं तु विविक्षम् ।

8. पुच्छादिभ्यः प्राग् दुहितृदुहितृस्तु दौहित्याकामधिकार इति तु मितात्त-  
त्वरात्त्विकामदग्नत्वकाराकामिद्यारण्याश्रीचरवानां चाविसम्बादेन सम्मतः ।

श्रीमूलवाहनदावतस्वकारौ तु दुहित्यभावे पुच्छाकामेवाधिकारो न तु दौहित्या-  
द्यधिकारानन्तरम् । तथाहि नारदवचने दुहितृबानास्त्वय इत्यन्न दुहितृरन्वयपदे-  
नान्वयपुच्छादिवाचकेन नान्वयः सम्भवति । दुहितृपदस्य जन्यविशेषवचनस्य जन्यान्तरे  
सम्भेन निराकाङ्क्षस्यान्वयासम्भवात् । तस्यस्यापि दुहितृत्वपेत्रेव तदुपप्यापक्ष्य  
गैराकाङ्क्षगविशेषात् । किंच । वाचवचनवचने तावत् । दुहितृर इति प्रथमान्तरस्य  
तात्प्र इति च यज्ञवक्त्वात् च यज्ञानान्वयवेत्येनान्वयपदेनान्वयाद्युपहितस्यापि  
मातुरित्वस्यैवान्वयदेकवक्त्वतयान्वयिपि मातुरन्वयवरव पुच्छादिष्टङ्गते न दुहितृन्वयः ।  
किंच । सद्गङ्गेषु तद्गङ्गी श्वर्णो मवतीति वौधाववचनवचनादग्नत्वराङ्गक्षपुच्छाधिकार  
वद्य प्रत्याक्षरेवितो न तु व्यवहिताङ्गवदौहित्यादेतिरित्वाद्यतुः ।

तन्मन्त्रम् । अन्यवाचकस्य जन्यान्तरेवान्वये पुच्छ इत्यादाप्यवेता न स्थात् ।  
तस्यान्वयप्रतिसम्बन्धितयान्वयादिरेवाधिकारापि गुरुः । अन्यथा दुहितृः पुच्छ इत्याप्य-  
वेता न स्थात् । तस्यान्वयक्षुत्यावश्यानमेवेदम् । वाचवचनवचने च यज्ञपि मातुर-  
न्वयः पुच्छादिवेत्यावश्यापि विभवेत् चुताः पित्रोरित्वेन प्राप्ताधिकाराकामेव  
प्रत्यक्षदानदुहित्यभावेयापिक्षत्वाप्यनार्थेऽगुवाहः । स च दौहित्यानन्तरमन्वयविवरजः ।  
सद्गङ्गेष्विति वौधाववचनस्तु मातुराकामप्रत्यक्षिकारात्मान्वयपदस्य  
चापत्तमात्रावाचकत्वात् पुच्छदुहितृवाचाकामधिकारं प्रतिपादयत्वनान्तराधिकार-  
प्रत्याक्षरेवाक्षात्तुं युक्तमिति च विविदेव ।

9. सक्षात्तामावे त्वाह येतीक्ष्वरः । अलीकामप्रवति वाचवाचादवास्तुः ।  
अप्रवति दुहितृद्यपौच्छर्वन्तरादित्यामवीतावां भवतावां वाचवा वाचनमत्वात्-  
कोक्षाक्षरूपीवनमवाप्नयुः ।

विवाहभेदेन व्यवस्थया वान्धवानामधिकारमाह स एव । अप्रजः स्त्रीधनम्भर्तु-  
ग्रास्तादिषु चतुर्ब्यपि । दुहितृणां प्रसूता चेष्टेषेषु पितृगामि तदिति ॥ चतुर्षु ब्राह्म-  
दैवार्षप्राजापत्येषु । अपिश्चद्वादून्ध्यवैपरिष्ठियः । यद्वा अतद्वाग्यसंविज्ञानवज्ज्ञब्रीहिणा  
ब्राह्मभिन्ना दैवार्षप्राजापत्यगान्ध्यार्ष्वलालः । तेन ब्राह्मदैवार्षगान्ध्यवैप्राजापत्येषु  
यज्ञनम् । अप्रजायामतीयां भर्तुर्भवेत् तदित्यत इति मनुवचनविसम्बादः ।

ब्राह्मादिविवाहेऽप्याध धनमनपत्याया भर्तुर्भवति । तदभावे भर्तुः प्रवासना-  
नाम् । सामिप्रवासने भैवान्तराये भर्तुप्रत्यासनेरेव पुरखारणीयत्वात् ।

शेषेष्वासुरादिषु परिष्ठितायासु पितृगामि । एकशेषेषु मातापितृगामि ।  
तत्त्वापि प्राज्ञाद्वाग्यामि तदनु पितृगामि । पितृरविवृतोक्ताव्यायात् । विश्वद्वचनान्न-  
दाभावाच । अतश्च तनुना । यत्त्वस्याः स्याद्दनं इतं विवाहेष्वासुरादिषु । अतीता-  
यामप्रजसि मातापितृत्वदित्यत इति । इन्द्रे मातृशब्दपूर्वनिपातेन मातुः प्राप्तम्यम-  
वगमितम् ।

कन्याधने च मातुरभावे पितुरधिकारचवाणादचापि तथैवौचित्यात् । यथाह  
कौधायनः । रिक्षं मृतायाः कन्याया मृक्षीयुः सोदराः स्वयम् । तदभावे भवेन्मातुल-  
दभावे भवेत्पितृरिति । मातापितृत्वावे तत्पत्नासन्नगामि ।

पूर्वाक्षेषु सर्वेष्वेव विवाहेषु प्रसूतापत्यवतो चेत् दुहितृणां तद्वाद् । दुहितृ-  
शब्देन चाच दुहितदुहितरो लक्षणे इति प्रागेवोक्तम् । तत्त्वाप्यनजादिकमो गौत-  
मादितो दुहितधनयहवकाषे दौहित्रीभूतुपि प्रीत्या किञ्चिद्वानुभिति च प्रागेव  
निरूपितम् । दौहित्रीकाष्ठ मातामहीधनयहवं भिन्नमातृकाणां विषमानां मातृदारेष ।  
पौचाणां पितृदारेषैव । प्रतिमात्र वा स्वर्गोभाग इति गौतमस्मरणात् ।

10. जीमतवाहनम् । ब्राह्मादिविवाहेषु यज्ञनं तदेवानेन व्यवस्थाप्ते ननु  
तत्त्वदिवाहेऽप्याध । सर्वं धनम् । ब्राह्मादिषु यज्ञनभिति सम्बन्धे वर्त्मानसम्बन्धे ह्रत-  
कालवक्ष्यात्कष्टदृष्ट्योपरत्वेऽतीतविवाहक्रियादारकसम्बन्धे ह्रतवक्ष्याया जघन्यत्वा-  
दित्याह ।

तदनुगामी दायतत्वक्षणदप्येवम् ।

तदपेष्ट्रशब्दम् । पूर्ववचने अप्रजःखीधनं वान्धवा मृक्षीयरिति सामान्यत उक्ते  
कीदृशा अप्रजसः के वान्धवा मृक्षीयरित्येवाकाष्ठोदयाद् ब्राह्मादिपदानां तदिष्टेष्व-  
त्वस्यौचित्यात् । यत्त वर्त्मानभूतसम्बन्धातं विनिगमकमुक्तं तदपि तु च्छम् । विभाग-  
कालेऽतीतत्वस्योभयवादिष्टेष्वात् । धनकालकाषे वर्त्मानत्वस्य चाप्येजकत्वात् ।  
विवाहजन्यभाव्यात्मकसम्बन्धस्यान्तरफूलत्वाच् ।

11. यत्तु सर्वेष्वपि विवाहेषु पितृः सकाशात् तथा प्राप्तं विवाहेतरं तद्वा-  
भातृदानेव । यदाह काव्यायनः । पितृभातृव यहसं दुहितुः स्यावरं धनम् । अती-  
तायामप्रजसि भातृगामि तु सर्वदा ।

विश्वरूपजीमूतवाहनौ तु कन्यादित्यायां यतिष्ठन्वां इतं तद्वा भातृगामि । विवा-

हात्परतो जन्मस्याक्षाधीयवात् । विवाहकालकल्पस्य च विवाहभेदेन भर्तगामित्वा-  
मातापितृगामित्वाचेत्याहतुः ।

तद् । स्यावरविषयत्वादस्याविरोधात् । न च दण्डापूपिकथा स्यावरप्रवृत्ते  
जड्डमयद्वयं भादृयामायाव्यवेति वाच्यम् । अपवादे तत्त्वायाप्रवृत्तेः ।

12. मुख्यान्तु सोदराभासेव । भगिनीशुर्लक्ष्मीसोदर्थ्यामिति गौतमवचनात्  
सोदराभावे मातुः । ऊर्ज्ज्ञ मातुरिति तदचनादेव । पूर्वचैक इति तु परमतम् ।

13. बन्धुदत्तं प्रथममप्नजसो मृताया बन्धुनां तदभावे भर्तुः । बन्धुदत्तन्तु बन्धु-  
नामभावे भर्तगामि तदिति कात्यायनवचनात् ।

14. पूर्वोक्ताप्रजःस्त्रीधनाधिकार्थ्यमावे त्वाह दृहस्यतिः । माटव्यसा मातुणानी  
पितृष्ठस्त्री पितृव्यसा । अश्चूः पूर्वजपत्नी च माटव्युल्लाः प्रकोस्तिंताः । यदासामौरसेवा  
न स्यात् सुतो दौहित्र एव वा । तत्पुत्रो वा धनन्तरासां खण्डीयाद्याः समाप्तयुः । अचौ-  
सपदेन पुच्छुयोरुपादनन्तर्याः सर्वापवादकात्वात् । अपवादकामञ्च प्रागुक्त एव ।  
सुतपदेन च सपत्नीपुच्छ्य । सर्वासामेकपत्नीनमेका चेत् पुच्छिणी भवेत् । सर्वास्ता  
स्तेन पुच्छेण प्राह पुच्छवती र्मनुरिति मनुवचनात् । न तु सुतपदमौरसपेशेष्वाम् । आन-  
र्धक्षात् सपत्नीपुच्छसद्वेशुपि खण्डीयाद्यधिकारापत्तेनादित्यवहारविरोधात् । तथा  
च दौहित्राभावे औरसपुत्रादिलक्षदभावे सपत्नीपुच्छः । तत्पुत्र इति तच्छ्वेन अवहित-  
येआरौरसपत्नीपुच्छयेवपादानं नानलतरस्यापि दौहित्रपुच्छ्य दौहित्रपुच्छ्य तस्य पितृ-  
दाने वहिर्भावात् । तथा च दौहित्रपर्वत्ताभावे प्रथममौरसलक्षदत्तु तत्पुत्रपौत्राः ।  
पुत्रपौत्रैर्चर्त्तयं देयमिति उद्यापकरणाधिकारिणां पितृदानाधिकारिणात् तेषामेव  
रिक्षयवहारौचिक्षात् तदभावे सपत्नीपुच्छतपुच्छतपुच्छाक्षाम् । तेषामेव तदा पितृदान-  
त्वाद्यापाकार्त्त्वात् । प्रागुक्तमनुवचनात् । सदेषामभावे सत्त्वपि चमुरादिषु सपितृ-  
वनन्यगतिकैतदचनवण्डगिनीपुच्छाद्यामेव माटव्यसाधिष्ठने प्रत्यासन्तितारत्वेना-  
धिकारः ।

15. चुक्षादीना तु यात्काष्ठादनमात्रभाक्तम् । वचनविरोधे सपितृवयवास-  
स्तेरप्रयोजकात्वात् । तस्मात् खियेनिरिक्षिया अदायादा इति चुतेः । अग्निक्षियाक्ष-  
दायाच्च खियेनिरिक्षिया अदायादौ यासां स्त्रीवान्वलाधिकारसासामेव । अव्यासान्  
चुतिमनुवचनाभ्यां दाययवहानिवेष्वेति चुतिक्षिकाकारदरदसादीनाम्भाचिक्षा-  
त्वगिवन्युयाज्ञीमूतवाहनादिष्ठौरसपर्वनिवन्युवां सिद्धान्तात् ।

इति स्त्रीधनविभागः ।

## CHAPTER VI.

1. अथ विभागकाले केनविदपङ्कतस्य पञ्चाद् चातस्य विभागप्रकारः । तत्र मनुः । अत्ये धने च सर्वस्मिन् प्रविभक्ते यथाविधि । पञ्चाहश्चेत यत्किञ्चित्पत्त्वं समताप्रयेत् ॥ योगीश्वरः । अन्योन्यापद्वत्क्रच्यं विभक्तैर्यच्च दृशते ॥ तत् पुनर्लोकमैर्शैर्किंभजेरग्रिति स्थितिः ॥ अत्र समपदादुद्घारविभागो निविदः । विभजेरग्रितिवचनाद् येनैव दृष्टव्यतीनैव न याद्यन्यपूर्वुत्पन्नदत्तस्मिति वेऽथते ।

2. एतात्वता वस्त्रार्थवस्त्रे स्तेयदेवाभावः समुदायक्रव्यापहारे स्फुड्जा गृहीतत्वादिति केवलिद्वयनं प्रलापः । साधारणत्वे परस्तत्वस्यापि सत्वेन परस्तापहारस्य स्तेयपदार्थस्यावादयोथत्वात् । अथ परकोयबुद्धा न गृहीतस्मिति न स्तेयमित्युच्यते । तत्र अपङ्कवे परकीयबुद्धेरावश्यकत्वात् । अतश्चापद्वत्तमित्युक्तम् । न तु मनुना ज्येष्ठस्यैव समुदायक्रव्यापहारे देवो दशिंतो न कर्त्तव्यसाम् । यो सोभादिनिकुर्वीत ज्येष्ठो आद्वृन् यत्योर्यतः । सोऽज्येष्ठः स्याद्भागस्य नियन्तर्यच्च राजभिरिति ॥ सत्यम् परन्तु सम्भावित अस्य पिट्ठस्यानीयस्य ज्येष्ठस्यापि देव उक्ते तत्परतत्वाणां पुच्छस्यानीयानान् दण्डापूपन्नायेन देवः सुतरासुक्त एव भवतीति । अतश्च समुदायक्रव्यापहारे समविभागवचनस्य स्तेयदेवाभावपरस्तमाचक्षाणा अनेन मनुवचनेन दूरापास्तः । अविशेषेण देवप्रतिपादिक्या श्रुत्या च यथा । यो वै भागिनम्भागानुदते च्यते न सः । अथ वैनम्भ च्यतेऽप्य पुच्छमध्य पौच्छक्षयत इति । यो भागिनम्भागानुदते निरस्यति । भागलक्ष्मै कथचिद्द्विलाद् वस्त्रनया वा न प्रयच्छतीति यावत् । समागम्भुम्भ एनं नोत्तारस्यते नाश्यति देवपश्चात् । यदेनम्भ नाश्यति तस्य पुच्छं पौच्छं वा नाश्यतीति श्रुतेरर्थः । श्रुत्यज्ञात्मं प्रलपन्तु नाम साधारणत्वस्यापि परस्तत्वेनापहारपदार्थान्पायादित्युक्तमेव । यथा मौद्दे चरौ विप्रेण सादृशस्यात्मतिग्रिहितया माषेषु गृह्णमाणेषु मुद्रावश्यवबुद्धा गृह्णमाणत्वादयच्चिया व माषा इति निषेष्ठो न प्रवर्तते मुद्रावश्यवबुद्धा गृह्णमाणत्वादिति पूर्वपक्षिते निषेष्य प्राप्तिमात्रापेक्षित्वात्तत्त्वापि माषावश्यवानामप्यवर्जनीयहर्षं यज्ञसाधनत्वस्त्रेति निषेष्यप्रदृशनपायात्मतिनिधितयापि तदनुपादानं सिद्धान्तितम् ।

3. राज्ञे तु भागिभिर्नि निवेदनोर्यं राज्ञे निवेदितमपि तेन सामादिनैव दापनीयमिति प्रीत्यविक्षेदादिद्वयप्रयोजनकमेव काव्यायन आह । बन्धुनापद्वतं द्रव्यम्भलाम्भैव प्रदापयेत् । अविभागकालेन बङ्गभुक्तमित्यपि न वक्तव्यं सुक्तमपि राजा न याद्यनिवाशयेनाह स एव । वस्त्रानामिभक्तानाम्भोगम्भैव निवर्तयेदिति । नहि न्यूनाधिकभोगो वारयितुं शक्योऽवर्जनीयत्वादितिभावः । एवं दृष्टार्थतयैवोपपत्तौ नास्यापि स्तेयदेवाभावपरस्तमद्वार्थात्वापत्तेस्तमादचापि स्तेयप्रायस्मित्वं राजदण्डस्य भवत्येवत्यवधेयम् ।

## CHAPTER VII.

1. अथाविभाज्यम् । तत्र योगीश्वरः । पिण्डव्याविरोधेन यदन्यत् स्यमर्जितम् । मैत्रमौद्दाहिकस्मैव दायादानाद्वा तद्द भवेत् । क्रमादभ्यागतं इत्थं छतमभ्युद्धरेत्तुयः । दायादेभ्यो न तद्दाहिद्यथा लब्धमेव च ॥ पिण्डव्याविरोधेनेति सर्वशेषः । खातम्ब्रे पिण्डव्योपधातेन यज्ञैचादिकं तस्याप्यविभाज्यत्वापत्तौ महाजनाचारविरोधो विद्यालब्धे नारदवचनविरोधस्त्वा । कुटुम्बम्बिभ्याद्वातुर्यो विद्यामधिगच्छतः । भागं विद्याधनात्स्मात् स लभेताश्रुतेऽपि सर्वांति ॥

कात्यायनस्त्विभाज्यविद्याधनलक्षणमुखेनैतदेव इष्टयति यथाह । परमक्षोपभोगेन विद्या प्राप्नान्यतत्त्वं या । तया प्राप्नन्यनं यत् विद्याप्राप्नं तदुच्चत इति ॥ मनुरपि स्यव्यमाह । अनुपद्मन् पिण्डव्यं अमेशा यदुपार्जयेत् । दायादेभ्यो न तद्दाहिद्यथा लब्धमेव च ॥ अमेशा सेवादिना ।

क्रमादभ्यागतायाम्बिण्डव्याविरोधेनेऽद्वृतायामपि भूम्यां विशेष उक्तः शङ्केन । पृष्ठव्याप्तान्तु येष्वुमिमेकस्त्वेदुद्धरेत् अमात् । यथाभागं लभन्तेऽन्ये दत्तांश्चन्तु तुरीयक-मिति । उद्भर्त्ते चतुर्थांश्चमुद्धरणमस्त्वमधिकन्दत्वांश्चर्यं सर्वे समं विभजेरङ्गिवर्थः । यथायेताद्वाविभाज्यत्वं यदेन लब्धं तत्स्यैवेति न्यायादेव प्राप्नं तथापि प्रायो अवहार-शास्त्रे न्यायसिद्धानुवादकान्येव वचनानीति परिभाषाप्रकरणे प्रपञ्चितमिति न दीप्तः ।

2. अविभाज्यान्तरमण्हुक्तं मनुना । वस्त्रम्पञ्चमलङ्घारं छताद्वानुदकं त्वियः । योगक्षेमं प्रचारस्त्वं न विभाज्यं प्रचल्यते ॥ परं वाहनम् । वस्त्रादि यदेन धृतं तत्स्यैव । अष्टतन्तु विक्रयाद्यर्थं विभाज्यमेव । छताद्वा यक्ताद्वं सर्वैर्यथाशक्ति भोक्तव्यं न तु तोलयित्वा विभाज्यम् । उदकमुदकाधारः कूपादिः सर्वैर्यथोपयोगमुपभोज्यः । स्त्रियो-दास्योविषमा न विभाज्याः पर्यायेण कर्म्म कारयित्वाः । पिञ्चवरद्वालु समा अपि न विभाज्याः । स्त्रीव्यवरद्वासु न विभाग इति गौतमवचनात् । योगक्षेमशङ्कव्यामिष्टापत्ते उच्यते । तयोरविभाज्यत्वं पिण्डव्यविरोधेनार्जितयोरपि दृष्टान्तयोच्यते । न हि खतः फलतो वा तस्य विभागः सम्भवति पैठकस्य तु सुतराम् । तथा चाह लौ-गात्रिः । क्षेमपूर्णौ योगमिष्टमित्याङ्गत्वदर्शिनः । अविभाज्ये च ते प्रोक्ते शयना-सनमेव च ॥ इति योगक्षेमशङ्केन तत्कारिण्यो राजमन्त्रपुरोहिताद्य उच्यते इति केचित् । शस्त्रामरोपानव्यभृतय इत्यन्ये । प्रचारो गृहारामादिप्रवेशनिर्गममार्गः । तस्याप्यविभाज्यत्वम् ।

3. पिण्डतं वस्त्रादिकं आङ्गभोक्ते दातव्यम् । यथाह दृहस्यतिः । वस्त्रालङ्घारश्चादिपिण्डव्याहानादिकम् । गन्धमाल्यैः समर्थर्थं आङ्गभोक्ते तदप्ययेदिति ॥

4. स्त्रीष्टतेऽप्यलङ्घारो न विभाज्यः । पत्नौ जीवति यः स्त्रीभिरलङ्घारो धृतो भवेत् । न तम्भजेरन्दायादा भजमानाः पत्निः ते इति । धृत इत्वनेनाधृदस्य विभाज्यमेव । पत्नौ र्जावतीत्वनेन प्रतिजीवनचिङ्गतया यज्ञ देशे ये धार्यते स न विभाज्य इति छचित्तम् ।

5. पिण्डप्रसादलक्ष्यापि न विभागः । पिण्डप्रसादाद् भुज्यन्ते वस्त्राण्डाभर-  
गानि च । भुज्यन्ते इति वचनादविभाग्यत्वम् । तथा पिण्डदत्तस्थापि पिण्डभां यस्य  
यद्यत्तन्तस्यैव धनम्भवेदिति च सर्वग्रात् । पिण्डप्रसाददानप्रीतिदाने अथौचित्यानुरो-  
धेनेव च्छेये । न तु यथाकामम् । महाजनाचारविरोधात् ।

6. पिण्डदत्ताविरोधोपर्जितप्रपञ्चो भूयःसु ग्रौर्यादिविषयमादाय सूतिवचःसु  
दृश्यते स गम्भेविल्लरभिया न लिख्यते ।

### CHAPTER VIII.

1. अथ विभागानधिकारिणः । तत्र योगीश्वरः । क्लीवेऽच्यु पतितस्तज्जः  
पञ्चरुद्धमत्तको जडः । अन्वोऽचिकित्यरोगाद्या भर्त्याः सुन्निरंशकाः । तज्जः पति-  
तज्जः । क्लीवान्वौ यदि जन्मत आरभ्य तदा विभागानान्हैवेव । यदि तन्तरा तदा  
सदपगमन्तेवैषधादिना तर्हि दृश्यादा तदिभागः स्यादायथ्यविश्वोऽधितादिति रोयावि-  
भागाहृवेवेति ध्येयम् । आद्यशब्देनाश्रमान्तरगतपिण्डेष्युपपातकिवधिरमूकनिरन्त्रि-  
यात्यां यद्यग्रामम् । यथाह वशिष्ठः । अनंश्वाश्रमान्तरगता इति । नारदोऽपि । पिण्ड-  
दिट् पतितः घण्डो यस्त स्यादैपपातिकः । औरसा अपि नैतेऽशं लभेन् क्षेत्रजाः कुत-  
इति । मनुरपि । अनंश्वौ क्लीवपतितौ जायन्वदधिरौ तथा । उन्मत्तजडमूकास्थ  
ये च केचिन्निरन्त्रिया इति । व्याधिना निर्गतमिन्द्रियं यस्य स निरिन्द्रियः । तेन  
क्लीवाद्वेदः । कस्चिन् निरन्त्रियाः पाणिपादादिहीना इत्याह ।

2. एते ज्ञावादयोऽश्वभाजो न भवन्ति किन्तु ग्रासाच्छादनदानादिना भर्त्याः  
पीषणीयाः । अभरणे तु महान् दाषः । यथाह मनुः । सर्वेषामपि चेत्यां दातुन्यायं  
मनीषिणा । ग्रासाच्छादनमत्यन्तं पतितोऽश्वदद्वेदिति ॥ अथन्तं यावत्त्वावत् ।

3. तत्रापि पतितोपपातकिनेऽर्यावद्यायचित्ताचरणमनंश्वित्वम् । औरसा-  
दिना प्रायस्त्रित्तमकुर्वतेऽनु निपतनमेव ।

4. एतेषाच्च विभागाद्यागेव दोषभाक्षेत्रंश्वित्वम् । न पुनर्विभागोत्तरमपि  
इत्तविभागापद्धरणं प्रमाणाभावत् ।

पश्चादप्यौषधादिना दोषनिर्हरणेऽस्येवांश्वभागितेति विज्ञानेश्वराचार्याः । युक्त-  
स्वेतत् । दोषप्रयुक्तत्वादिभागानर्हतायाः । विभक्षेषु सुतो जातः सर्वर्यात्यां विभागभा-  
गिति न्यायसाम्यात् ।

5. पतितादिषु लिङ्गमविवक्षितमनुपादेयत्वात् । ब्राह्मणो न सुराम्पिवेदि-  
त्यादिवत् । तेन यथासम्बवे पली दुहितर इत्यादेवप्यमपवादः ।

6. क्लीवादीनामनंश्वेषपि तत्पुत्राद्यामंश्वेऽलीलाह योगीश्वरः । औरसाः क्षेत्र-  
आस्थेषां निर्देषां भागद्वारिणः । निर्देषाः पूर्वोक्तानंश्वत्प्रयोजकदेवशून्याः । तत्र  
क्लीवस्य क्षेत्रजपुचः सम्बलन्तेषामौर्द्वेषापि पुचदययहवभितरपुचशुदासार्थम् ।

7. पतिततस्तुतयोर्न भरतम् । तथा च देवकः । मृते पितरि न सीवकुण्डलस-  
जडान्वकाः । पतितः पतितपर्वं लिङ्गी राशांश्चभागिनः ॥ तेषां पतितवर्जेभ्योभर्तं  
वक्ष्यते दीयते । तत्सुताः पितृदायांश्च जमेरन् देववर्जिता इति ॥ लिङ्गी प्रब्रजितादिः ।  
पतितपदेनात् पतितस्तुतस्यापि यह्यं पतितोत्प्रक्षयेन तस्यापि पतितत्वात् । पतितपर्वं  
पतितमेवात्मच लिथाः सा हि परमाभिगी भवतीति सूतोः । मृत इति विभागकाषो-  
पक्ष्यते जीवद्विभागेऽप्यनर्हत्वात् ।

8. कात्तायगेऽपि । अक्षमेऽना सुतस्यैव सगोत्राद्यस्य जायते । प्रब्रज्यावसित-  
स्यैव न रिक्षकोषु चार्हति ॥ शीरक्षोपरिक्षयानक्षरमुत्तमस्तोपरिक्षये इयोरप्यक्षमो-  
क्षात्मतयोः । सगोत्रादियोगोत्पदः क्षेत्रजाः पुत्रो नार्हति धनम् ।

न च सीवादेवपनयनाभावेन पतितत्वात् कर्त्य दारक्षमन्य इति वाचम् । उपम-  
यनानर्हतयाऽनुपेतत्वे शुद्धवदपतितत्वात् ।

9. एतेषां सीवादोनां दुहितरो विवाहपर्यन्तं भर्त्याः संखर्त्यात् । तत्-  
क्षियस्तु पुत्ररहिताः साप्त्यगोभर्तीया अप्रतिकूलाच्छेत् । अन्यथा वह्यक्षर्तीयाः ।  
तदाह योगीश्वरः । सुताच्छेषां प्रभर्त्याः यावन्तो भर्त्यसात्मृताः । अपृचा योवितस्यैवाः  
भर्त्याः साधुहृतयः । निर्बास्या अभिष्ठारिणः प्रतिकूलात्तथैव च ॥

10. आपक्षमः । अपपाचितस्य रिक्षपिण्डोदकानि निवर्त्तन्ते । अपपाचितो  
मिद्दोदीक्षितः । तथा दृहस्पतिः । सवर्णाजोऽप्यगुणवाङ्मार्हाः स्यात् पैदैः धने । तत्पि-  
खदाः ओचित्या ये तेषां तदभिधीयते । उत्तमर्द्धमर्द्धेभ्यः पितृत्वायते सुतः । अत-  
स्लिपदीतेन नास्ति तेन प्रयोजनम् । तथा गवा किं कियते या न धेर्नुर्ग गर्भिणी ।  
कोर्द्यः पुत्रेण जातेन यो न विद्वान् न धर्मिकाः । इत्याग्नौर्यार्थरहितस्तपोद्वान-  
विवर्जितः । आचाररहीनः पुत्रस्तु मत्रोत्तास्तमः सूतः ।

अथर्वः । पित्रादेरौर्क्षदेहिककर्मणाः कर्त्ता । सुतोऽसंखृतोऽपि वरः श्रेष्ठः ।  
छेष्ठो वेदपारगोऽप्यपरो न वर इति ।

पुमान्नो न रक्षाद्यस्मात् पितृत्वायते सुतः । तस्मान्पुत्र इति प्रोक्तः स्वयमेव स्वय-  
म्भुवेति सूतेः पुत्रकर्मकर्तुः पितृधनस्त्राम्भेव वेतनमत्तस्तदकुर्वतः कुतो वेतनाधि-  
कार इति भावः ।

मनुरपि । सर्व एव विकर्मस्या नार्हन्ति भातरो धनमिति । औतस्मार्त्यकर्मा-  
नधिकारिणो विकर्मासत्तात्म भागानर्हा इति भावः ।

इति विभागनधिकारिणः ।

## CHAPTER IX.

1. अथ विभक्षकात्मम् । तत्र नारदः । यथेजताता वह्यः एथगर्भमाः एथक-  
क्षियाः । एथक्षकर्मगोपेता न चेत्प्रव्येषु संमताः । स्वभागान् यदि दद्युले विक्रोशीयुर-  
पापि वा । दुर्युर्यथेषु तत्पर्वनीश्वासे सधनस्य हीति ।

अस्यार्थः । एकस्माच्चाता वहने भातरो यदि विभक्ता इति शेष इति केचित् वयनु एथगच्छमा इत्वादिव विभक्ता इत्वर्थः । तदिभागस्यात्माप्रतीतेऽनर्थक्षात् । एथ-  
रिवभिन्नो धर्मो देवपिण्डिजार्थं रूपो येवां न त्वमिहेऽत्रादिरूपः । तस्य व्रतसाध्यत्वे-  
उप्यविभागेऽपि एथलात् । तथा च छहस्यतिः । एकपाकेन वसतां पिण्डेवदिजा-  
र्थं नम् । एकं भवेदिभक्तानां तदेव स्याद्गृहे गृहे । एवज्ञ प्राख्यनिरूपितम् । एथकृतिया-  
लौकिकात्मवद्विषया येवां एथगिवभिन्नं ये कर्मणां काङ्क्षनपेवशादीनां गुणा उपसर्जन-  
भूता मुसलोणूखलाद्वयुपलादयत्ते येवाम् । ते चेत्वार्थेषु न संमताः परस्परमनुमतिं  
घद्यपि न कुर्वन्ति । तथापि ते खभागात्मवदित्युर्विक्षोखीयुवा । तत्सर्वमन्यदप्या-  
धीकारगच्छादानादि यथेष्टु खेष्ठ्या कुर्यात् ।

विभक्ता यद्यनुमतिं कुर्वन्ति अवहारसौकार्यमात्रं भवति । अथ न कुर्वन्ति  
तथापि न दानाद्यनिष्पत्तिः । तत्र हेतुः हि यस्मात् ते खधनस्यासाधारणात्मापद्मस्य  
धनस्येषाः खामिनः । साधारणे खत्वे हि परस्परानुमतिपेक्षा न त्वाधारणेऽपीति  
भावः ।

2. यस्तु छहस्यतिनोक्तम् । विभक्ता वाऽविभक्ता वा सपिण्डाः स्थावरे समाः । एको  
द्वयोऽस्तः सर्वात् दानाधमनविक्रिय इति । तदप्यविभक्तानुमतिं अवहारसौकार्यार्थमेव  
प्रतिपादयति यामाद्यनुमतिवदित्यवेष्यं । स्थावरे हि चिरकालस्यापि नियतस्तत्त्वा-  
दिविगमे विभागाविभागनिर्यात्या दुःशङ्खः स्यात् कालान्तरे । सत्यान्वनुमतौ विभाग-  
निर्यात्यानपेक्षा एव अवहारः सिद्धति सर्वानुमत्या इत्यत्वादित्याश्रय इति विज्ञानेऽन्वरा-  
दयो वहन आङ्गः । कृतिचन्द्रिकाकारलु यदि विभक्ता अपि स्थावरविभागं दुःखरं  
मन्यमानास्तत्प्रजमेव फणकाले विभज्य भोक्ष्यात् इत्यभिसन्धिना तदितरधनमेव एथग-  
विभज्य गृहीत्वा स्थावरं मश्यकमेव स्थापयन्ति तादृशस्थावरविभयमिदमित्याह ।

तत्त्वस्यगमात्मम् । अविभक्तात्मादेव तत्त्वानुमतिपेक्ष्यात् ।

3. स एव । येनांश्चो याद्वयोलब्धः प्राप्य तत्र विचारयेदिति । प्राप्य खीष्टात् ।  
विभागकाले भक्षा पञ्चादिप्रतिपद्यमानो दात्ता वारखीयेऽत्यायहे दद्यन्तेवाह स एव ।  
खेष्ठ्यगतविभागो यः पुनरेव विसम्बदेत् । स दात्तांश्चे खको श्याप्यः शासनीयेऽनुबन्ध-  
श्चत् । अनुबन्धो निर्बन्ध आयह इति यावत् ।

इति विभक्तात्मम् ।

## CHAPTER X.

1. अथ विभागप्रकारे उक्ते तत्पन्देहे निर्बन्धप्रकार उच्चते । तत्र यात्त्वस्यात् ।  
विभागनिक्षेपे ज्ञातिवन्मुक्त्यस्यभिन्नेष्वितौः । विभागभावना चेया गृहेष्वेच्च यौतकैः ॥

विभागस्य निक्षेप्यतापे विभक्तमध्ये केनचिल्लृते ज्ञातिभिः पिण्डवन्युभिः । वन्मु-  
भिमातुकादिभिः साक्षिभिर्जोदासीनैः साक्षिजात्मवद्विद्वितौः । यद्यपि ज्ञातिवन्मुक्त्येऽपि  
ज्ञातिविधयैव निर्बन्धस्तात्मवद्विषयान्तरज्ञात्मे ज्ञातादिष्ठयम-

भावरूपविभागलिङ्गतस्वज्ञा विभागकर्त्तारम्भेति गोचर्णीवर्हन्यायेन एथगुपात्ताः । क्षेख्येन विभागपञ्चेण च विभागस्य भावना निर्णयो ज्ञातव्यः । तथा यौतकैः पृथक्कृतैः । युमि-अणामिश्रणयोरिति धात्वनुसारात् । मृहैः द्वेषैः ।

नारदः । विभागधर्मसन्देहे दायादानां विनिर्णयः । ज्ञातिभिर्माग्लेख्येन पृथ-कार्यप्रवर्त्तनात् । ज्ञातिगृहणात् तेषु सत्यु नान्यसाक्षिपुरखार इत्येतदर्थम् । कार्यं क्षण्यादि तस्य पृथक्प्रवर्त्तनात् ।

शङ्खः । गोचरभागविभागर्थे सन्देहे समुपस्थिते । गोचरजैस्याप्यविज्ञाते कुलं साक्षित्वमहैति । कुलं बन्धवो मातुलादयः । अतयव नारदेन मुख्यत्वाज्ज्ञातय एव विर्दिष्टाः । ज्ञातिभिरिति पाठस्वनाकरः पुरातनपुस्तकेषु निबन्धेषु चादर्शनात् ।

लिखितन्तु साक्षित्वोबलवदिति परिभाषायां निरूपितम् ।

2. नारदः । दानयहृष्णपञ्चमगृह्येत्यपरियहाः । विभक्तानां पृथग्ज्ञेयाः पालधर्मसामव्याधाः । साक्षित्वं प्रातिभाव्यस्य दानज्ञहृष्णमेव च । विभक्ता आतरः कुर्य-ग्रीवभक्ताः कथस्तन । येवामेताः क्रिया लोके प्रवर्त्तने सरिक्षयतः । विभक्तानवगच्छे-युर्हेत्यमप्यन्तरेण ताण् । धर्मोवैश्वदेवादि एकपाकेन वसतामिति प्रागुक्तवचनात् । आदृत्यामविभक्तानामेको धर्मः प्रवर्तते । विभागे सति धर्मोऽपि भवेत् तेषां पृथक् एथगिति नारदेनेवाक्तव्यात् ।

हृष्णस्तिः । साहस्रं स्थावरं न्यासः प्राग्विभागस्य रिक्षितनाम् । अनुमानेन विज्ञेयं न स्थाताम्यचसाक्षित्वौ । न स्थातामित्वं यदीत्यधाहारः । पृथगाथव्ययधनाः कुलोदत्त्वं परस्परम् । विशिक्षपथस्य ये कुर्यावैभक्तास्ते न संशयः । ज्ञायेव्ययोधनस्य एथग्नेषामिति विग्रहः । कुलोदं दुद्यार्थं धनप्रयोगः । विशिक्षपथो वाग्विज्ञम् । परस्पर-मिति । एकोव्यातोत्तमर्थः परस्पाधमर्थः । एकोविक्रोणाते परस्प ब्रोणाति । इत्येव-मादिभिर्ज्ञैर्विना विभागमनुपपद्यमानैर्विभागः प्रमातव्य इत्यर्थः ।

एताः क्रिया इति बङ्गवचनामिलितानामेवैषां लिङ्गत्वमिति न अभितव्यम् । अस्तसमल्लानामपि तदिधानात् । न्यायमूलकत्वात् वचनस्य ।

3. अनुमानेनायनिर्णये दिक्षे श्रपथैस्य विषयात्यत्पूर्यस्वानुसारेण निर्णयः । युक्तिक्षयसमर्थासु श्रपथैरेव मर्हयेदिति परिभाषायां निरूपितं ।

4. यत्र तु मानुषं निर्णयकामात्ति युक्तायस्तामाः । दिव्यश्रपथाध्यवसायस्या-न्यतरस्य न भवति । तत्र पुनर्विभागः कार्यं इत्याह मनः । विभागे यत्र सन्देहे दायादानां परस्परम् । पुनर्विभागः कर्तव्यः एथक्षानस्यैरपीति ॥ स च परिश्लोभो-मयव्ययमिलादि संबद्धिविभागादिरीत्येवनुसन्धेयम् ।

यत्र मनुनैवाक्तव्यम् । सङ्करंश्चो निपतति सङ्कलन्या प्रदीयते । सङ्कलन्या ददानीति त्रीणेतानि सङ्कलन्यादिति । तत् परादतिकारस्याभावे । कान्यादानदानान्तरयोरप्येवम् ।

इति विभागसन्देहे निर्णयः ।

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समाप्तेदन्दायमागार्थं विवादपदम् ।

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VIRAMITRODAYA.

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# CONTENTS.

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## CHAPTER I.

### INTRODUCTORY REMARKS ON PARTITION OF HERITAGE.

Page

§ 1. Introduction.—2. Partition of Heritage defined.—3. Heritage defined.—4. Partition defined.—5. Heritage divided into two classes, obstructed and unobstructed.—6 to 22. Arguments against this division.—13 to 16. Notion of proprietary right derived from Sástras.—23 to 31. The above arguments answered.—32 to 43. Notion of proprietary right, established to be not of divine origin.—44 to 48. The object of the discussion regarding the origin of the notion of proprietary right.—49 to 53. Arguments in the Dáyabhága against right by birth, cited and criticized.—54. Conclusion that Heritage is two-fold.—55, 56. Jímútaváhana's view of partition and heritage, is cited and criticized; Dáyatattva cited.—57. Nature of the right of a co-sharer in joint property, &c., ..... 1—43

---

## CHAPTER II.

### LAW OF PARTITION.

#### PART I.

§§ 1—8. When and by whom partition is made.—9. Distribution by the father not arbitrary.—10. Of allotment of shares to wives.—11. Of equal distribution.—12. Father's double share in self-acquired property.—13. Not so in ancestral property.—14. Equality of shares preferable in all cases.—15. Partition with one who wishes not to take any share.—16. Partition of heritage extends to the third degree; participation *per stirpes* not *per capita*.—17. Of partition of ancestral property recovered by father and of the father's right of disposal.—18. Mother's life no bar to partition.—19. The mother entitled to a share.—20. Initiation of uninitiated brothers.—21. Marriage of sisters, &c.—22. Of alienation of immoveable property.—23. Partition may take place at the desire of a single co-sharer.—24. Of a co-sharer born after partition.—25. Of partition by brothers of different classes, ..... 44—100

**PART II.**

§ 1. Principal and subsidiary sons, described by Yájnavalkya.—  
 2. The legitimate son.—3. The son of the appointed daughter.—  
 —4. The wife's son including the son of two fathers.—5. The  
 secret-born son.—6. The maiden-born son.—7. The son of the  
 twice-married woman.—8. The adopted son.—9. The purchased  
 son.—10. The son made.—11. The self-given son.—12. The  
 son received with a bride.—13. The deserted son.—14. The  
 son by a Súdra woman.—15. The *aurasa* is the principal, the  
 rest subsidiary.—16. Partition by these.—17. Partition by the  
 legitimate son and the son of the appointed daughter.—18.  
 Partition by the legitimate son and the adopted son, &c.—  
 19. The conflicting texts, dividing the twelve sons into two  
 classes the first of whom are heirs to kinsmen, how reconciled.—  
 20. All this is relative to the same class.—21. The son by a  
 Súdra woman cannot get the whole property.—22. Of the son  
 of a Súdra by a female slave.—23. Of the son of a twice-born  
 by a female slave, ..... 100—130

---

**CHAPTER III.****LAW OF SUCCESSION**

TO THE ESTATE OF A PERSON SEPARATED AND NOT RE-UNITED.

**PART I.**

§ 1. General rule of succession.—2. The wife's succession; wives  
 of different classes; effect of marriage in different forms; her  
 right to perform religious ceremonics, and to take the entire  
 estate.—3. Limitation of her right; two texts of Kátýáyana,  
 interpretation of these by the author of Smritichandriká; that  
 by Jimútaváhana, stated and criticized; conclusion.—4. Other  
 texts on the priority of the wife's succession.—5. Texts in con-  
 flict with these.—6. Reconciliation by Dháresvara.—7. Criti-  
 cized.—8. Reconciliation by Sríkara; criticized.—9. Another  
 reconciliation; criticized.—10. Reconciliation by the author.—  
 11. The term "sonless" in texts on succession explained; *sa-*  
*pinda* relationship explained.—12. Jimútaváhana's objection to  
 the above reconciliation, stated at length.—13. The same  
 criticized; re-union explained; chaste widows entitled to main-  
 tenance only when the husband is unseparated, ..... 131—175

---

**PART II.**

§ 1. The daughter's succession and the reason for the same.—2.  
 The reason stated by Jimútaváhana excluding the barren and  
 widow daughters noticed and criticized.—3. The opinion that  
 the appointed daughter alone succeeds, is criticized.—4. The  
 order of succession amongst daughters.—5. A text of Vrihaspati  
 explained by the author of the Smritichandriká.—6. The plural  
 number in 'daughters' in Yájnavalkya's text explained, ... 176—183

## PART III.

§ 1. The daughter's son's succession.—2. The interpretation that the daughter's son means the appointed daughter's son, is rejected.—3. The daughter's son is not entitled to preference to the widow and the daughter, .....	183—184
---	---------

## PART IV.

§ 1. Succession of the parents.—2. A passage of the Mitákshará cited, where the order of succession between parents is determined.—3. A passage of the Smritichandriká cited, criticizing the Mitákshará.—4. The Dáyabhágá cited.—5. Of the priority of the father.—6. Objections against the Mitákshará, removed.—7. The author's conclusion, .....	185—192
--	---------

## PART V.

§ 1. Succession of brothers.—2. Of whole brothers and half brothers, .....	192—194
--	---------

## PART VI.

§ 1. Succession of the brother's son.—2. Uterine brother's son succeeds in preference to a half brother's son, .....	194—196
--	---------

## PART VII.

§ 1. Of the gentiles ; its meaning as in the Mitákshará.—2. The same as in the Smritichandriká and Dáyabhágá.—3. Criticized.—4. Gentiles consist of the <i>sapindas</i> and <i>samánodakas</i> ; these terms explained.—5. Cognates ; three descriptions ; maternal uncle &c.—6. Preceptor and pupil.—7. Fellow-student.—8. The king.—9. The Bráhmaṇas, .....	196—201
---	---------

## PART VIII.

§ 1. Succession to the property of a hermit, &c. ; the text of Yájnavalkya explained.—2. An objection stated and answered,.....	202—203
---	---------

## CHAPTER IV.

## RE-UNION.

§ 1. Equal distribution.—2. Self-acquired property.—3. With whom re-union may be formed.—4. Succession to re-united property ; two couplets of Yájnavalkya explained ; Manu cited.—5. Interpretation by Srikara.—6. Same as in the Smritichandriká.—7. Same by Súlapáni.—8. Same as in the Dáyatattva.—9. The wife's succession.—10. The Sister.—11. The
--

<i>sapindas, &amp;c.—12. Sons re-united or not, equally succeed; an exception regarding a son born after partition.—13. Maintenance of the wife and daughters; the marriage of the latter,</i>	<i>Page 204—219</i>
--	-------------------------

---

## CHAPTER V. WOMAN'S PROPERTY.

### PART I.

<b>§ 1. Woman's property enumerated.—2. The term <i>stridhanam</i> bears no technical meaning.—3. The terms 'gift before the fire' &amp;c., explained.—4. The amount of maintenance allowed to females.—5. The power of females over their property.—6. Males have no power over woman's property; maintenance may be exacted by the wife, if not wicked.—7. Husband's power over the wife's property in the event of distress.—8. What was promised by the husband to his wife must be given by his sons; sons cannot divide the mother's property during her life,.....</b>	<b>220—228</b>
---	----------------

---

### PART II.

<b>§ 1. Joint succession of sons and daughters to gift subsequent and affectionate gift of husband.—2. Maiden daughters succeed to <i>yautaka</i>.—3. Daughter's succession to other kinds of property in preference to sons.—4. According to Jímútaváhana this refers to <i>yautaka</i> only.—5. But according to Vijnánesvara, this refers to every description of property.—6. Latter's argument criticized by Jímútaváhana.—7. Criticism by the author.—8. The daughter's daughters and sons.—9—15. Succession to property of a childless woman.—9. Succession of husband and parents according to form of marriage.—10. Jímútaváhana's opinion criticized.—11. Brothers' succession to gift of parents.—12. <i>Sulka</i> goes to uterine brothers.—13. Gift of <i>bandhus</i> goes to <i>bandhus</i>.—14. Of other heirs.—15. Females not expressly mentioned, cannot succeed, .....</b>	<b>228—244</b>
---	----------------

---

## CHAPTER VI.

### PARTITION OF CONCEALED PROPERTY.

<b>§ 1. Partition of concealed property.—2. Concealment of joint property is theft.—3. Restoration to be caused by gentle means, .....</b>	<b>245—247</b>
--	----------------

---

## CHAPTER VII.

### OF IMPARTIBLE THINGS.

<b>§ 1. Self-acquired property.—2. Of other things not liable to partition, .....</b>	<b>248—251</b>
---	----------------

Page

**CHAPTER VIII.****EXCLUSION FROM INHERITANCE.**

§ 1. Those incompetent to inherit.—2. Maintenance.—3. Penance.—4. Right cannot be divested by subsequent disqualification; right revives on subsequent cure.—5. Females disqualified.—6. Their sons entitled.—7. Outcast and his son, not to be maintained.—8. Son by a woman of superior class.—9. Impotent &c. can marry.—10. The daughters and wives.—11. The vicious are excluded, .....	252—256
--	---------

---

**CHAPTER IX.****RIGHTS OF SEPARATED CO-SHARERS.**

§ 1. Power of a separated co-sharer to dispose of his share.—2. Immoveables.—3. Partition cannot be re-opened, .....	257—259
--	---------

---

**CHAPTER X.****ASCERTAINMENT OF A CONTESTED PARTITION.**

§ 1. Evidence of partition. 2.—Circumstantial evidence.—3. Ordeals and oaths.—4. Partition over again, .....	260—262
--	---------

---

Index, .....	265—286
--------------	---------

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## E R R A T A.

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Page 11, line 14, *for* property *read* the notion of property.

- " 17, " 6, *for* the father *read* his father.
- " 19, " 10, *for* desires *read* the Rágas.
- " 29, " 24, *for* deities *read* deities being pleased.
- " 37, " 1, *for* even it *read* even if it.
- " 107, " 36, *for* fact *read* determinate thing.
- " 125, " 22, *for* shares *read* sharers.
- " 126, " 33, *for* give *read* pay.
- " " 34, *for* of performing *read* for performing.
- " 160, " 22, *for* moreover *read* " moreover.
- " 165, " 21, *for* wife *read* wife".
- " 168, " 18, *for* with *read* by.
- " 175, " 13, 14, *for* what is contrary to the nature, meaning as it does of things  
*read* meaning as it does what is contrary to the nature of the  
thing.

# VÍRAMITRODAYA.

## PARTITION OF HERITAGE.

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### CHAPTER I.

SEC. 1. Introduction.—2. Partition of Heritage defined.—3. Heritage defined.—4. Partition defined.—5. Heritage divided into two classes, obstructed and unobstructed.—6 to 22. Arguments against this division.—23 to 54. These arguments refuted.—55, 56. Jimútaváhana's view in respect of partition and heritage noticed and criticized.—57. Nature of the right of a co-sharer to the joint estate, &c.

1. Partition of Heritage, wherein the learned dispute in various ways about the interpretation of the texts of Manu and other sages, is to be explained by this treatise.

2. Nárada thus declares its definition :—“ Where the division by the sons of the paternal property is treated of, that topic of litigation is by the wise called partition of heritage.”

“ Paternal” signifies what belongs to the parents ; for the affix *ya* (in the term *pitrya* rendered into paternal) is added to the term *pitri* which is the result of the uni-residual conjunctive compound (of two words *mátri* and *pitri* equivalent to mother and father respectively). Because the division of the mother's estate also has been in the sequel ordained (by Nárada).

Both the terms “ paternal” and “ sons” indicate any relation ; for in the text,—“ The wife and the daughters also, &c.”—partition by other relations also, of the property of the husband and the like, is ordained (by Yájuavalkya).

Accordingly the terms father and the like, are not used by Manu in premising the subject in the following text:—

“ Thus has been declared to you the law of man and wife based upon affection ; listen now to the law of heritage, and to the mode of having offspring on failure of the true son.”

Here again, by the term “ law of heritage,” is intended the partition of heritage ; for that alone is in the sequel explained (by Manu) after the laying down of its definition ; and because, in the introduction also, that only has been set forth as the topic of litigation ; thus,—“ The law of man and wife and *partition*.” Accordingly also, Manu ordains in the sequel, the partition of the estate by any relative.

3. The term “ heritage” again, is said to be constituted of the property to which (one's) right accrues, solely by reason of (his) relation to the owner. Thus the author of the Nighantu says :—“ The property of the father which is to be divided, the sages call heritage.” Here too the term “ father” stands for any relation, for the term heritage is used to denote also the estate of any other relative. “ Which is to be divided” means what is capable of partition (and not what is to be necessarily divided;) for otherwise the term heritage would not include the estate which devolves on an only son or the like, by reason of the absence of (actual) partition.

As for what is said by Jímútaváhana, namely :—“ The term *dáya* (heritage) by derivation, signifies what is given : hence the use of the term *dáya* and the verb *dá* is in a secondary sense ; inasmuch as there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely, the accrual of another's right after the extinction of the right of a person who is dead or gone to retirement or the like. But there is no abdication (as in the case of gift) on the part of the deceased or the like. The term heritage (*dáya*) has a technical meaning, signifying wealth in which one's right dependent on relation to the former owner arises on the extinction of his ownership.”

That is not good : for if the meaning be admitted to be technical, then the supposition—that the use of the term *dāya* and the verb *dā* is in a secondary sense—is useless ; because the meaning of a word is said to be technical, when there is utter absence of the meaning of its root. Nor can it be said that the meaning here is derivative as well as technical: because the inapplicability of the derivative meaning has been set out by (Jímútaváhana) himself. To assert that the meaning of a term is derivative as well as technical, after assuming a figurative meaning of its root, is useless, involves the fallacy of mutual dependence, is against the order in which meanings are naturally suggested by words, and is a *reductio ad absurdum*. By the insertion of the phrase “on the extinction of his ownership” in the definition of heritage, it becomes too narrow, because it will be established, that right arises by birth also.

4. The term “partition”, however, signifies the adjustment into specific portions, of the divers rights which accrued to the entire estate. Hence the term “partition” is not used in cases of ownership of an only son &c., in the wealth of the father, and the like: “the heritage has been obtained by such a person” is the expression used (in such cases). Moreover where a single chattel, such as a female slave, or a cow, or the like is common to many co-parceners, then also the meaning of the term partition, namely, the adjustment of rights into specific portions, holds good ; because the right of each (co-sharer) is made known by means of the service (of the slave) or the milking (of the cow) or the like, done at regulated intervals. Accordingly it will be shewn that (in such cases) partition is to be made in the mode declared in the following texts of Vrihaspati :—

“ A single female slave should be employed on labour in the houses (of the several co-sharers) successively according to the shares.... and water of wells or ponds is to be drawn for use according to need....such property (as is regularly not divisible) should be distributed by equitable adjustment, else it would become useless.”

5. The heritage, as described above, is of two sorts, namely, unobstructed and obstructed. As the right of the

sons, &c. to the property of the father and the like, accrues from the very birth, through the relation of sonship, &c., although the (previous) owner, such as the father, is alive,—that is their unobstructed heritage, because the existence of the (previous) owner does not constitute an obstruction. But the property of a deceased person who is destitute of male issue, and who was separated but not re-united, when it devolves on the father, brother, or the like, is called the heritage with obstruction ; for their right thereto accrues only on the cessation of the owner's existence which formed the obstruction.

6. But is not heritage in every case obstructed ? For it cannot be asserted that the right even of sons, &c. arises by birth alone while the owner is alive.

Because if by birth alone the right of the sons and the like accrued to the property of the father, &c. then the property would be common (as well to the father, &c. as) to the sons and others as soon as they would be born ; consequently without their permission the father and the like could have no right to the establishment of the sacred fires, which can be accomplished by means of wealth. But this would be opposed to the following Sruti :—“ One who is black-haired and to whom a son has been born shall establish the sacred fires.”

7. Moreover the texts declaring the imparibility of what has been, previously to partition, received by favor of the father and the like would become unmeaning. For, if the gift has been made by the father with the consent of the sons, then the gift is made by all ; therefore the prohibition (of partition) becomes useless, in consequence of the very absence of the possibility of partition : again, in the absence of the consent (of the sons), no gift of joint property is possible. Hence the texts concerning the affectionate gift and the like, by the father and others would become unreasonable.

8. Similarly, because without the consent of sons, also the affectionate gift by the husband and others to the wife and the like, would be impossible, and in case of

their consent, the gift is made by sons also ; hence in the following text—" What has been given by the affectionate husband to his wife, she may, even when he is dead, consume it or give it away, excepting immoveable property,"—the declaration,—in the passage " consume it or give it away"—of the impartibility of what has been through affection given by the husband, would become meaningless. Nor can it be contended that the text does not intend to establish the affectionate gift in the undivided state, and its impartibility ; but, by construing together " what has been given" with " excepting immoveable property," it establishes that even after partition, immoveable property shall not be given, through affection, by the husband to the wife, and even if given by him through ignorance, shall be resumed and divided by the sons and the like,—but that moveable property when given shall not be resumed is only a superfluous injunction ; and it signifies, as its purport, only the prohibition of gift through affection of immoveable property to the wife. Because such a construction is unreasonable, involving as it does the connection of terms which are apart from each other. If the intention were merely the prohibition of affectionate gift of immoveables, then the other portion would become a superfluous precept which is another term for what is useless.

9. Now the text, namely,—“ The father is master of all the gems, pearls and corals ; but neither the father nor the grandfather is so of the whole immoveable property,”—also the following text, viz.,—“ By favor of the father, apparels and ornaments are used ; but immoveable property may not be enjoyed even by favor of the father,”—must be admitted to imply the prohibition of affectionate gift of immoveable property, before partition ; for the mention of its prohibition is preceded by the authorization of gifts through affection, of gems, pearls, &c. : otherwise these (texts) would be useless as superfluous precepts. Accordingly as the right of the sons and the like, arises by birth, therefore in the gift, even without their consent, of gems, pearls, and the like, the father is independent ; but in the case of immoveable property, the distinction is, that a gift can be made only with their

consent. This being the plain meaning of the above two texts, right by birth follows.

This is wrong:—for the texts refer to immoveable property inherited from the grandfather. The meaning of the texts is,—that although when the grandfather is deceased, his right being extinguished, the right to his estate is common to the father and the son, still the consent of the son is requisite in the case of immoveable property, but not in the case of gems, pearls, and the like.

10. As for the text of Gautama, namely,—“ By birth alone one acquires ownership of property: this the sages declare,”—which is, by the author of the Mitákshará, cited as an authority for holding birth to be a means of proprietary right.

That has been already explained (in a different way) by the author of the Dáyatattva, thus,—“ Inasmuch as it is through the relation of mere birth—which is the cause of sonship and which is stronger than any other relation,—that the son’s right to the property of the father accrues at the time of the cessation of the father’s right, the son and not any other relative, should take that property; this the sages declare.”—Its meaning, however, is not that even while the father’s right continues, the son’s right accrues thereto; for that would be in conflict with the texts of Nárada and Devala. Since in the text—“ When the father is dead, the sons shall divide the wealth of the father,”—Nárada speaks of the father’s wealth, otherwise he would have simply said “ shall divide the wealth;” also in the text—“ When the father is dead, let the sons divide the father’s wealth; for they have not ownership while the father is alive, and free from defect,”—Devala also, after having said “ the father’s wealth,” has, by the latter half, viz., “ for they have not ownership &c.,” clearly set forth the absence of their right as the reason thereof. “ Free from defect” signifies, having no defects, such as, degradation, &c., which extinguish right. Manu also clearly declares the absence of the ownership of the sons in his property while the father and the mother are alive, thus:—“ After (the demise of) the father and the mother, the sons having

assembled together, shall divide the paternal heritage ; for these are not masters while those are alive."

11. As for what is asserted, namely, Sankha and Likhita say, in the text,—“The sons shall not divide the heritage while the father is alive ; although ownership is subsequently acquired by them, the sons are certainly incompetent by reason of the absence of independence in respect of wealth and religious duties”—which has been interpreted by the author of the Smritichandriká in the following way :—“Although ownership” in the property of the father “is by them,” i. e. by the sons “acquired,” i. e., gained “subsequently,” i. e., immediately after their birth and not afterwards, still “while the father is alive” they shall not divide his wealth except at his desire, the sons being incompetent to make partition “by reason of the absence of independence” i. e. by reason of their being dependent on the father “in respect of property and religious duties;”—hence from this text it follows that the right of sons, &c. to the property of the father and others accrues by birth.

This too is not tenable ; for, consistently with the various texts of Manu and other sages, which ordain the absence of right (during the lifetime of the father), this text ought to be explained otherwise, and it has been so explained in the Kalpataru, thus :—“Although ownership is subsequently acquired in the wealth gained by the sons through learning &c., without making use of the paternal property ; still by reason of the absence, during the lifetime of the father, of their independence in respect of property and religious duties, there is not (absolute) ownership even in the property so acquired,—then what ownership can there be in the father’s estate ?

12. Moreover the notion of the proprietary right (and of the means of its acquisition) is derived solely from the Sástras : but in these birth is not, as inheritance or purchase or the like is, set forth as a means of such right ; therefore right by birth is without authority. Hence is refuted also the argument that as the text,—“A wife, a son and a slave, these three are incapable of having pro-

perty : whatever they acquire belongs to him whose they are,"—is intended to establish mere dependence, so are the texts declaring the absence of ownership (during the lifetime of the father). Because in the cases of a wife, a son and the like, their ownership (in the wealth acquired by them) by means of spinning, &c. and of tutorship, being established by texts like,—“What has been obtained before the fire, &c.”—the interpretation that the above text refers only to the absence of independence is consistent with reason ; for otherwise the competence—of sons and others, mentioned in the Puráñas and the other Sástras, to the performance of religious duties, which can be accomplished by means of property, would also be contradicted. But here on the contrary there being no authority for holding that birth is a cause of proprietary right, it would be merely useless to put on various texts other interpretations (than what they plainly signify).

13. Besides if the notion of the proprietary right were derived from profane authority, then also the notion of the means of its acquisition would be deducible from profane authority ; consequently the text of Gautama, namely, —“An owner is by inheritance, purchase, partition, seizure or finding : acceptance is an additional mode for a Bráhmaṇa ; conquest for a Kshatriya ; gain for a Vaisya and a Súdra,”—would become unnecessary, for it would embody a superfluous injunction. Indeed useless sacred texts, embodying superfluous precepts, such as,—food is prepared from rice by cooking,—are not declared (by sages).

The meaning of the above text is as follows :— “Inheritance” is heritage ; “purchase” is well-known ; “partition” is the division of heritage, whereby the right to specific portions is indicated ; “seizure” is appropriating grass, water, wood and the like appertaining to common tracts such as forests,—which have not been appropriated by any other ; “finding” is obtaining hidden treasure whereof the owner is unknown ; a person is owner where these causes of right exist and becomes one, whenever these happen ; “for a Bráhmaṇa, acceptance” i. e. acquisition in the shape of receiving presents and the like “is an additional,” i. e. peculiar “mode,”—for inheri-

tance and the like are common to all (the classes): the terms "additional mode" is to be construed with all (the clauses that follow); "for a Kshatriya, conquest" i. e. what is gained through victory in battle as well as through fines and the like, is a peculiar mode; "gain (*nirvesa*) for a Vaisya" is what is acquired as profit from agriculture, tending of cattle, and the like, and "for a Súdra," what is received as wages for serving the twice-born classes: the root *Visa* with the prefix *nir* signifies gain, for in the vocabulary called Trikándi, it is laid down that *nirvesa* signifies gain or enjoyment. The terms Vaisya and Súdra being illustrative, the occupations,—such as driving horses, &c. in the case of the Sútas,—of the mixed classes, namely, those that are sprung from a father of a superior class and a mother of an inferior class, as well as those that are descended from a mother of a superior class and a father of an inferior class,—which are laid down in the Ausanasa and the like, are included under the term "gain," for all these are in the nature of "gain."

14. Moreover, in the text,—"A Bráhmaṇa, who seeks even by officiating at sacrifices or by becoming a preceptor to obtain any property from the hands of one who takes what is not given to him is the same as a thief,"—the provision of punishment for one who acquires wealth even by means of his own (lawful) profession, such as officiating at sacrifices, "from one who takes what is not given to him" i. e. a thief, would be unreasonable, if the notion of proprietary right were derived from profane authority; since the acquisition through one's own (lawful) profession constitutes no offence.

In my opinion, however, right being derived from divine authority, no right can by virtue of this very text, accrue in the wealth given by a thief for officiating at the sacrifices performed by him, consequently the provision of punishment is very reasonable.

15. Again if the notion of right were derived from profane authority, then such language as 'my property has been stolen by this person,'—could not be used; for the thief himself would have right therein.

In my opinion such expression is correct, because theft, by reason of the prohibition of it cannot generate right.

16. If, like gold &c., the right too therein were perceptible by the authority of the senses, then it being ascertained, the doubt—whether a certain property is this person's or another's,—could not arise, just as no doubt arises as to what is gold. This is also what the author of the *Sangraha* has said:—"Whatever is in the hands of a person, he is not necessarily the owner of it. Is not the property of one found in the hands of another (transferred) by theft and the like? Therefore it is from the *Sástras* alone that the notion of proprietary right springs, and not even from perception. For otherwise it cannot reasonably be said that the property of one has been stolen by another. The means of acquisition are found in the *Sástras* and are likewise separately described."

"In the *Sástras*" such as "An owner is by inheritance, &c." ; "the means of acquisition of wealth,"—both which are common (to all classes) as well as what are peculiar (to any one class,) "are separately described", and known therefrom. Otherwise if it were deducible from profane authority, the *Sástras* regarding it would be useless; the rest is clear. "As I have separately described," is the reading (of the above text) in the *Smritichandriká*; the prior reading is written in the *Madanaratna*.

17. Nor can it be contended that,—it being well-known to all people that what is capable of being used according to one's pleasure is his property,—the distinctive feature of property is the capability of being dealt with according to pleasure: hence there is not the defect of including (in the definition of property) what is acquired by theft or the like, for in such property there is not the capability of being used by the thief or the like according to pleasure; inasmuch as their fear is observed at the time of dealing with such property: accordingly there being no similarity between the proprietary right and gold, &c. as such, the doubt also (as to the right of any person to a particular property) is consistent.

Because it is impossible; for special rules are laid down by the *Sástras*, directing the use of property for the purpo-

ses of the support of the family and the like ; and it is nowhere found that property consists in what can be dealt with according to pleasure. This too has been said by the author of the *Sangraha* after setting forth the opposite view, thus,—“ Nor is that called property, which can be dealt with according to pleasure ; the application of all this, is inculcated by the Sástras alone.” Here in the first half the adverse opinion is set forth ; and in the latter half, the same is refuted.

18. Nor can it be said that inasmuch as, *utpatti* also, which is another name for birth, is like inheritance, &c., set forth as a means of proprietary right, in the text of Gautama, namely, “ By birth alone, &c.” ; therefore although property and the means of its acquisition be deducible from the Sástras alone, still the right by birth of the sons and the like, to the property of the father and the like, is unaffected.

Because it has been already stated that the above (meaning) being open to many exceptions, a different interpretation is to be put upon the text. With this very intention, Dháresvara also has come to the conclusion, that the right of property is exclusively known from the Sástras alone.

19. Again, if right by birth of the sons and the like accrued even when the father and the like are alive, then partition would, at the desire of the sons and the like, take place even against the will of the father and the like. It cannot be contended that it would not take place by reason of the texts declaring absence of independence (of the sons during the father's lifetime). For in that case, (notwithstanding the texts declaring dependence), there would be a mere breach of the rules of morality and religion, but an action at law (for partition) would certainly lie. Just as on the occasion of explaining the text, namely,—“ But when there is a mutual dispute between the preceptor and the disciple, the father and the son, the husband and the wife, or the master and the servant, no action lies,”—it has been previously shewn at length that the meaning of the text is, that if an action consisting of the four elements (*viz.*, the plaint, the written statement, the rejoinder, and

the determination of the matter contained therein) be instituted by the sons and the like against the father and the like, then there would be only injury to their welfare in this world and the next: the same would also be the case here. Nor can it be said, be it so; for that would be contrary to all the commentaries.

20. As to the passage in the ancient books, namely, "Sometimes by birth alone,"—that also is to be explained to mean the mediate cause; because the relation of the father and the son is based upon birth, and because the demise of the father is the cause of the extinction of his right.

21. Besides, according to the contention, that the right of the sons accrues by birth, as the ownership of the sons also arises (in the property of the father) while the father is alive, and consequently partition might take place against his will,—therefore the text of Manu, namely, "After the demise of the father, &c." must be explained (consistently with the contention) to prohibit previous partition by declaring that it takes place by their desire after his demise. But this again would be unreasonable; for it would be liable to the objection of intending a meaning not its own. Nor is it reasonable to suppose that the object of the above text is to enjoin the time for partition to be on the demise of the father and to enjoin partition. For both the injunctions would be unreasonable, inasmuch as the purposes of partition are (only) secular (and no spiritual good is derived therefrom so as to require any injunction, the natural inducement of man to effect it being sufficient). Neither can it be an obligatory injunction regarding partition (*viz.*, that it must be effected). For the making of partition is declared by Manu to be optional;—thus he says: "Either let them live together, or let them dwell apart for the sake of religious merit." If it be considered as a restrictive injunction as to the time (for partition), then partition must be made (if made at all) immediately after the death of the father and not afterwards, (for otherwise) there would be a contradiction of the rule, *viz.*, the effect is the immediate sequence

of the cause. For there is not in this instance, as there is in that of the sacrifice on the birth of a child, an objection analogous to the hazard of the newborn infant's life (that it may be postponed).

22. Hence the texts of Manu and the other sages must be taken, as shewing that sons have no ownership in the property of the living parents, but in the estates of both when deceased. But partition, which may by reason of the ownership (accruing on their death) take place at that time, if desired, is (only) noticed (and is not enjoined, for that is not necessary to be enjoined, which men do of their own accord). Accordingly also by reason of the conflict with these texts, it cannot be asserted that right accrues by birth. It will be hereafter stated that degradation, &c. also cause, as death does, the extinction of the right of the father and the like.

Hence it is only on the extinction of the right of the father and the like, that the right of the sons and the like accrues to their property, but not while their right subsists. Consequently as the existence of the owner and the like constitutes the obstruction in all cases, therefore heritage is in all cases obstructed and never otherwise. Accordingly the division (of heritage) into two classes is unreasonable.

23. To (all) this we say. If it be only on the extinction of the right of the father and others, that the right of the sons &c. accrues to their property, in that case it would follow that while the father and others are alive and free from defect, the sons would be incompetent to perform the ceremonies enjoined by the Vedas,—which can be performed by (one's own) wealth, and consequently there would be the same (§ 6) conflict with the following Sruti, namely,—“One who is black-haired and to whom a son has been born shall establish the sacred fires.” Nor, is the restriction (of the application) of the Sruti reasonable, for the purpose of conformity with a meaning of the Smritis which is evolved out of one's inner consciousness. Because the Sruti is, without distinction, applicable to sons &c., even while the father and the like who have

established the sacred fires, and who have performed the first sacrifice, are alive; and because performance of what is enjoined by the above Sruti, by all the learned persons who perform sacrifices,—is observed; and because in the gloss and the commentary &c. on the subject of conflicts, it has been concluded that the two terms “black-haired” and “to whom a son has been born” are intended to forbid the skipping over the seniors in age, but they are not to be taken in their literal sense which is indefinite. Nor can it be said that as in our opinion, the father’s competence to the performance of sacrifices arises by permission of the sons, so in your opinion the competence of sons &c. would arise by permission of the father and the like. For, in the opinion of both, the father’s right exists in the property, hence the accomplishment of what is of the essence (of sacrifices), namely, the relinquishment of property, is unobstructed; but, according to your opinion, how can the performance of what is of the essence of sacrifices &c. take place, inasmuch as the sons have no right at all (during the lifetime of the father), nor is proprietary right generated by permission? But in fact, however, the permission of the sons is not even required, the father being independent; but sons and the like are, on account of their dependence, under the need of permission of the father and the like; this much is the distinction,—in the same way, as women in performing religious and charitable acts by means of their own wealth are to take the permission of their husband by reason of the declaration of their dependence. But if the permission be not taken, then the independent conduct gives rise to sin or imperfection in the act, but what is of the essence of such acts is not (on that account) invalid. And the supposition, if made for the above reasons, that right is generated by permission of the father and the like, is supported by neither sacred nor profane authority. Therefore even if proprietary right be held to be deducible from the Sástras alone, then anyhow the inclusion of birth also by the term “finding” (*adhigama*) in the text,—“An owner is by inheritance, &c.”—is necessary, for the sake of the right of the sons and the like to the performance of sacrifices, &c. even when the father and the like are alive and free from

defect,—(the right) which rests on the authority of the Sruti, the Smriti, the Puráṇas and the custom observed by the learned. It will be shewn that in fact, however, the notion proprietary right is derived from profane authority alone ; and the ownership of the sons &c. in the estate of the father and the like (during their lifetime) is recognised by people (without the assistance of the Sástras) : and (ownership itself,) by others (who have nothing whatever to do with your Sástras).

24. As also for what has been said (§ 6), namely, that if the right be common as well to the father or the like as to the sons &c. who are incapable of signifying permission, how can the ceremonies of establishing the sacred fires and the like, take place in the absence of their permission? That has already been almost refuted, thus—that the father, by reason of his independence, does not stand in need of the permission of sons &c. even when they are capable of giving permission ; therefore *a fortiori* when they are incapable of giving permission. But Professor Vijnanesvara says—that the competence (of performing sacrifices at the expense of the joint property) follows by force of the very injunction for the performance of them.

25. Hence also the interpretation (§ 10) which is put by Jímútaváhana and Raghunandana upon the text of Gautama,—“ By birth alone one acquires ownership of property,”—namely, that birth is intended to be the mediate cause of right,—is useless.

26. As for the text of Sankha, the interpretation (§ 11) given in the Smritichandriká is preferable : but if the interpretation were as put in the Kalpataru, then the terms like “ acquired by learning” &c. being imported, (the defect of) the importation of many terms not occurring in the text would take place. The importation, however, of the term “ birth” (in the interpretation given in the Smritichandriká) is not unreasonable, because it presents itself through the suggestion of the terms sons &c., and because the importation is of fewer terms.

27. Hence in conformity with the texts (§ 9) of the Smriti which are supported by the Sruti, it is more proper to

interpret that the texts (§ 10) of Manu, Nárađa and Devala refer to the absence of independence (of sons &c. during the lifetime of the father and not to the absence of their right).

28. As also for what has been said (§ 7), namely, that on the hypothesis of right accruing by birth, the texts declaring the imparibility of what has been gifted through affection would become unreasonable; that too is not tenable, for they may be reconciled as having reference to (the sons') permission, and as having the object of establishing the invalidity of the affectionate gift of immoveable property: or, what is declared (in those texts) is the imparibility, by reason of the father's independence, of what, other than immoveable property, has been given by him even without the permission of the sons.

29. Accordingly with regard to immoveable property, there is the following special rule, namely,—“Immoveables and bipeds although acquired by a man himself, shall not be gifted away or sold without the consent of all the sons.” And the text, namely,—“The father is master of all the gems, &c.” is, however, more reasonable on the hypothesis that right accrues by birth. Nor is it right to say that it refers only to immoveable property acquired by the grandfather, for both are enumerated in the text, “neither the father nor the grandfather.” The declaration that what is even acquired by the grandfather himself is not to be given away when there is a son or even a grandson, indicates right by birth. As in the opinion of the adversary, the father alone has the right to the gems, pearls and corals of the grandfather, by reason of it being so declared; so, in this opinion also, notwithstanding the son and the like have a right thereto by birth, co-existing (with that of the father,) the father has the competency of making gifts: thus there is no difference.

30. Hence it is to be observed, that although the right of the sons &c. to the property of the father and the grandfather accrues by birth alone, still for the performance of the necessary religious ceremonies and for the purpose of affectionate gift, maintenance of the family, deliverance

from danger and the like that are prescribed by the sacred texts, the father possesses independence in dealing with the (joint) property other than immoveable: but with respect to immoveable property, whether self-acquired or inherited from the father or other ancestor, the dependence on the sons &c. is alike, by reason of the following text:—“ Although immoveables and bipeds be acquired by a man himself, there can neither be a sale nor a gift (of them) without convening all the sons. Those that have been born, as also those that are unborn, as well as those that are in the womb, all of them require maintenance: neither a gift nor a sale” (can take place).—To this (rule) again, there is an exception which will be mentioned.

31. As for what has been said, (§ 12) namely, that inasmuch as the notion of proprietary right is derived solely from the Sástras, and as the generation by birth of such right is nowhere declared in the sacred texts, how can it be admitted that the right of the sons &c. to the property of the father and the like, arises by birth? That, however, has been already refuted (§ 23), even granting that the idea of right is derived solely from the Sástras; since in the text of Gautama and others, birth also is declared as a means of right.

32. But, in fact however the proposition that the notion of right is derived solely from the Sástras, does not stand the test of reason. Amongst the Mlechchhas and the like also residing in their own country, who are devoid of even the slightest knowledge of the Sástras, the expression that “this much is so-and-so's *property*” and transactions, such as sale and purchase based thereupon are found. Therefore it must be admitted that property—which is determined by proprietorship—whereof purchase and the like are the means of acquisition is, by means of co-existence and absence of separate existence, known by them (the Mlechchhas) solely through the (profane) authority of the senses and the like, either as consisting in the capability of being dealt with according to pleasure, or as a substance of a distinct category of its own.

33. An enthymeme too based upon this reason has been mentioned by Vijnánayogin, thus:—\* Property is

known from profane authority, for it effects transactions relative to profane purposes, like rice, &c.;” the instance shows co-existence : “ the sacrificial fire and the like, that are known from sacred authority, do not give effect to transactions relative to profane purposes;” this is an instance shewing absence of separate existence. Hence the reason consists in co-existence and absence of separate existence. “ Although sacrificial fire and the like effect also transactions relative to secular purposes, such as, the boiling of food; still they do so, in the character of fire &c., as known from profane authority, but not in the character of sacred fire &c.:” thus there is no infraction of the rule. “ But here, purchase and the like are effected by means of gold &c. not as such but (by gold) as property only.” Just as when gold &c. become the cause of secular works, such as, ornaments, that is the secular phase (of gold &c.), similarly property also which exists in all (in gold as well as in other things) is only secular. “ Since in this world transactions such as purchase are not effected by what is not property.”

34. Nor can it be said that in this view, an objection would arise, namely, that the texts of law such as,—“ An owner is by inheritance &c.,”—would be useless as superfluous precepts, affirming, as they do, what is otherwise established by profane authority. For the above texts may reasonably be explained as referring to what conduces to spiritual good or to spiritual evil, like the consideration, in the Smriti of grammar, of the correctness and incorrectness (of words) consisting (respectively) in the expression of im-memorial meaning or its absence.

Thus on the subject of correct expression, (in the Mīmānsa) it has been concluded,—“ That the Sāstras treat of the correctness which is known from profane authority alone, but which is not discriminated by the people who use correct as well as incorrect words; but not of the correctness which is not deducible from profane authority: for (were it so, then) in the injunction,—‘ shall speak with correct words’ &c. there would be the fallacy of mutual dependence &c.” Similarly also is the case here.

35. Accordingly in the Nayaviveka, Bhavanāth says:—“ The means of acquisition such as birth &c. are

derived from the profane authority ; for what are discriminated to be the impressions on the mind of the primeval men, are unimpeachable, and the Smriti has for its object the consolidation of them, like the Smriti of grammar and the like." By the term " &c." in the phrase " birth &c." are included purchase and the like ; and by the term " and the like" in the phrase " grammar and the like" are included, music, examination of precious jewels, palmistry &c. It has been said by the venerable Professor while treating of the subject of Smriti, that desires and the like also which are undoubtedly deducible from profane authority are defined (in the sacred books) for the sole purpose of discriminating them for the benefit of the unthinking.

36. The text, namely, " An owner is by inheritance &c." has already been explained (§ 13). Professor Vijnánesvara, in the Mitákshará, has made the following comments : — " The term ' inheritance' refers to unobstructed heritage ; and the term ' partition' refers to obstructed heritage."

The author of the Smritichandriká, however, has, after commenting that the term ' inheritance' signifies birth alone which causes ownership of the sons &c. in the property of the father, and the like, explained the term partition to mean the distribution engendering ownership limited to a definite portion of the wealth of the father and the like. But this is not right. For partition is made of that in which proprietary right has already arisen, consequently partition cannot properly be set forth as a means of proprietary right. Indeed what is effected by partition is only the adjustment (of the proprietary right) into specific portions. If the enumeration be taken to comprise the principal as well as the secondary causes, then there would be variableness in the meaning of the term ' owner.' Accordingly in the Mitákshará, Professor Vijnánesvara says, that " the term partition is generally understood to relate to property belonging to several owners, and does not relate to what appertains to another nor to what is unowned ;" and that " the right of the sons and the like, by birth alone is most familiar in the world."

37. As also for the text,—(relating to succession), namely,— " The wife and the daughters &c." ; that again is

intended to prevent mistakes with regard to the proprietary right—notwithstanding it is derived from profane authority—when there are many persons who are recognized as heirs by reason of their relationship to the (late) owner. For it is held by all the commentators that the sacred Institutes on positive law mainly consist of superfluous precepts embodying matters derived from profane authority.

38. That property whereof the means of acquisition are prescribed, is deduced from profane authority alone—is approved also by the venerable Guru. For while setting forth the third interpretation which the Aphorism on the desire of acquisition admits of, he in the following passage, doubts the possibility of the adverse argument, namely,—If restrictions relative to the acquisition of property referred to sacrifices, then there could be no property at all, since proprietary right is not derived from profane authority ;—and then shows that the proper adverse argument is—That acceptance and the other modes of acquisition of property are the means of proprietary right, is a fact derived solely from profane authority :—“ Nor does (the text relating to) the means of acquiring property concern sacrifices, for (if it did so), there could be no property at all, consequently sacrifice itself could not be performed. This has been irrationally asserted by some one. To say that acquisition does not produce proprietary right, is a contradiction in terms.”

The meaning of this passage has been expounded by the commentator in the following way :—“ If the restrictions regarding the acquisition of property (laid down in the texts such as,—‘ An owner is by inheritance &c.’) related to sacrifices, (so that they could be performed only by property acquired agreeably to those restrictions), then this text could not signify that the restrictions relate to the means of acquisition of property ; for by signifying that the restrictions relate to sacrifices, its power of signification becomes exhausted. That being so, there would be no authority to show that what is gained by acceptance (of presents), and the like, becomes property, consequently sacrifices consisting in the relinquishment of property, could

not be performed by that (*i. e.* any thing so acquired) which is not property ; therefore, to what does relate the text embodying the rules regarding the acquisition of property ? (*i. e.* does the text ordain that nothing but what is acquired in the modes mentioned, becomes property or that sacrifices can be performed by no other property than what is so acquired ?) This is the adverse argument, the possibility of which is doubted : and the above is the meaning of the doubt. The passage beginning with ‘ This has been irrationally asserted &c.’ constitutes the answer to it ; its meaning is as follows : inasmuch as it is established by profane authority, that acceptance and the like, are the means of proprietary right, that cannot be a subject of the sacred books ; consequently the text signifies only that the rules have reference to sacrifices : consequently neither is there the impossibility of performing sacrifices, nor are the restrictions useless.”

Also in stating the conclusion, the venerable Guru does, upon the very assumption that the notion of property is derived from profane authority, explain the purpose of the disquisition thus,—“ Hence a breach of the rules affects the person, not the sacrifice.” The meaning of this passage also has been thus explained :—“ If restrictions respecting the acquisition of property related to sacrifices, then a sacrifice might be performed with such property only as was acquired consistently with the restrictions, and not with property acquired by violating the restrictions ; but the fault arising from the violation of the restrictions would not attach to the person (who performs the sacrifice). This is agreeably to the adverse argument. But what is affirmed in the conclusion is, that inasmuch as the restrictions regarding the acquisition of property do not relate to sacrifices, but affect the person, the performance of a sacrifice is not imperfect even with property acquired by infringing the restrictions : therefore the fault of violating the restrictions attaches to the person only.” It is here admitted that even what is acquired by infringing the restrictions, becomes property ; because otherwise the statement that sacrifices may be performed thereby would be contradicted.

39. While treating of the very same subject, the venerable Kumárilasvámī also is of the opinion that the notion of property is derived from profane authority. And this is easily accessible to those who feel curiosity for the valuable exposition of the subject (given by that venerable author).

40. Accordingly in the Sástradípika, Párthasárathi says:—"Acquisition which takes place out of (man's) desire (for property) is not derived from the Sástras." It takes place from (human) desire as one of the ends of man, for property which when acquired delights the man, is from perception, known as one of the ends of man, it cannot from any inference, be deemed as having for its sole object the performance of sacrifices. Therefore it is to be remarked, that property which is one of the ends of man, is used for the performance of sacrifices, in the same way as for any other transactions, for a sacrifice also is one of the transactions of man: but property is not subservient to sacrifices only, because, if that were so, no sacrifice could take place inasmuch as life (of man) would be extinguished (for want of property to sustain it, consequently who is to perform sacrifices ?) This (explanation) is given by Praghattaka. Here by refuting that acquisition is deduced from the Sástras, it is very clearly indicated that the notion of property and the means of its acquisition is derived from profane authority. It is further stated by him :—" Hence acquisition of property,—which is one of the ends of man,—thus becomes one of which the object is temporal. But the restrictions (relative to acquisition of property), having no temporal object, must have some spiritual object. The spirituality again of the restrictions, referring as they do to acquisition—which is an end of man,—must be taken to affect the man alone; hence it is indicated that a person acquiring (property) in any other mode (than what are prescribed by the Sástras) commits sin."

41. Hence also, it cannot be apprehended that the texts like "An owner is by inheritance &c.," are unnecessary ; since, by declaring as superfluous precepts, that inheritance and the like are the causes of proprietary

right,—a fact deducible from profane authority they intend to lay down restrictive rules with a view to prohibit any other means of property than those (declared in the texts) : like the restrictions relative to the direction of the posture of taking food which produces satisfaction of the appetite. The difference in the opinions of Bhatta and Guru consists in this only : (the one says) that the acquisition of property alone forms the instance in the disquisition of what affects sacrifices and of what affects the person (performing sacrifices) ; but the restriction is set forth as the argument of the adversary : (while the other says) that the restriction alone forms the instance there. But both of them concur in holding that property is derived from profane authority. This is the substance (of what they say). The arguments for and against their respective opinions are dwelt upon in the works of the learned on the subject, but are not set forth here as they do not bear upon the point in question.

42. Hence is refuted also the argument of Dháresvara and the author of the Sangraha, namely, that if the notion of property were derived from profane authority, then what is obtained by means of theft and the like would become property. For in the world, theft and the like are not recognized to be the means of proprietary right, inasmuch as such expression is used (in cases of theft &c.) as that “this property belongs to another and not to this person.” Again a doubt relating to proprietary right in the form,—‘Whether this property belongs to this person or to another’—(a doubt) which arises from a doubt regarding the (person’s) means of acquiring the property, such as purchase—is not unreasonable. Hence also the argument, that if the notion of proprietary right were derived from profane authority, then no one could say “that my property has been stolen by him,” for the property (which is the subject of theft) would belong to the thief alone,—entirely falls to the ground.

43. As for what has been said by the author of the Sangraha (§ 17), namely that, since the application of property is laid down by the Sástras, therefore it cannot possibly

be said that property consists in the capability of being dealt with according to pleasure ; because the use to any purpose according to one's pleasure is impossible. This too is only plausible. For we say, not that it is what *is* used according to pleasure, but that it is what is *capable* of being so used. (Were it) otherwise, (then) when the will (to use property in a particular way) is restrained for fear of the King and others, it would cease to be property ; moreover this anomaly would result, namely, that the same thing would be one's property when he desires to use it, and cease to be so while he feels no such desire. It may be that sometimes property is not dealt with according to pleasure, by reason of rules (regarding the use of property) laid down by the Sástras, as by reason of the restraint put by the King and others, but still the capability of being dealt with according to pleasure remains unaffected. Hence even if property be used by a person of perverse character in a way contrary to the Sástras, still it would not be a case of dealing with what is not property : but only sin would be incurred for violating the rules prescribed by the Sástras. For there is certainly the capability of being so dealt with arising from its being acquired (by him.) Accordingly it has been said also in the Nayaviveka, that " what is acquired by one is capable of it by him." " Capable of it" signifies, capable of being dealt with according to pleasure. (It is) similar to the capability in a seed of producing sprout,—resulting from the seed as such, although it does not produce a sprout owing to any obstacle. But in reality there is indeed a difference between the distinctive feature of property and the capability of being dealt with according to pleasure, in the same way as between the distinctive feature of seed and the capability of producing germ ; otherwise so long as the *differentia* of the capability is unknown, the capability (itself) will remain indeterminate. Hence like the caste of Bráhmanas, property is certainly a substance of a distinct category of its own, which is liable to production and destruction, and is manifested by the cognizance of its means. The only distinction is that the caste of Bráhmanas being a class is eternal. This is explained in the treatise on the subject and in the Lilávati and other works.

44. The object of the disquisition here, namely, whether the notion of proprietary right is derived from profane authority or from sacred authority has been explained in the *Mitákshará*, thus :—“ If the notion of property were deduced from sacred authority alone, then by reason of the text of Manu, namely,—‘ If Bráhmaṇas acquire wealth by means of a blameable act, they become purified by the relinquishment of that wealth, with prayer and rigid austerity,’—a person having no right to the property acquired by means of improper acceptance of presents, or by other means which are prohibited to that person,—in the same way as to what is acquired by theft and the like, such property would not be partible even among his sons. But if the notion of property be derived from profane authority, then the father’s right accrued to what was so acquired; consequently that being paternal property, may be divided by his sons. The acquirer alone is liable to perform expiation for the sin incurred in consequence of the violation of the prohibition : but his sons, who acquire that property by means of inheritance, which is not unlawful, are not required even to perform the expiation. Since Manu says :—‘ There are seven lawful means of the acquisition of property, namely, inheritance, finding, purchase, conquest, investment, performance of (religious) acts (for others,) and acceptance of presents from proper persons.’—‘ Investment,’ is the laying out of property for the purpose of profit ; ‘ performance of acts,’ means, officiating as a priest ; of these the three beginning with inheritance are lawful to the four classes alike ; but conquest is so, to the Kshatriya ; and investment when made in person, to the Vaisya and the Súdra ; but when not carried on personally, or even if carried on personally in times of distress, to all the classes ; but the performance of religious acts (on behalf of others) is peculiar to the Bráhmaṇas alone : this is the distinction.”

45. To this, the author of the *Madanaratna* raises the following objection :—Even if the notion of property be taken to be derived from sacred authority alone, still the prohibition of the acceptance of presents from improper persons and of the other reprobated means, intends not that they do

not produce the proprietary right, but that they engender merely sins. Because by the following texts, namely,—“A Bráhmaṇa taking food or accepting presents from any person, when in distress, is not tainted with sin, for he is equal to the burning sun; a twice-born is not stained with sin, if he carries on, but not personally, money-lending, agriculture, or trade, or does it personally at a time of distress,”—it is declared that he “is not stained with sin.” Hence it appears that no sin is incurred at a time of distress, consequently it is clear that sin is incurred in the absence of distress; for it is proper that the prohibition and the exception to it should refer to the same subject. Accordingly when there is no distress, expiation consisting of prayer and rigid austerity after the abandonment of the property,—only has been ordained. But with regard to the acceptance of presents from improper persons, and other reprobated means of acquisition, there is no text whatever providing punishment, similar to that in cases of theft and the like. Hence agreeably to both, the adverse opinion and the conclusion, there being no difference as to the generation, by the acceptance of presents from improper persons and other reprobated means, of the proprietary right of the person acquiring by such means, the partibility too amongst the sons and the like, of what has been so acquired is alike (in both opinions). Therefore what has been said to be the object of this disquisition is not reasonable.

. 46. What we say here is this. As in the opinion of those who assert that the notion of property is derived from sacred authority alone, the prohibition of theft and the like implies the non-generation of proprietary right, the infliction of punishment and the liability to penance, similarly let the prohibition also of the acceptance of presents from improper persons and of the like imply the same. Again, in the event of distress, as by virtue of the exception laid down in the following text,—viz. “Thus likewise may a person who has not eaten at the time of six meals (i. e. has fasted for three days together,) steal at the time of the seventh meal, from a man of mean conduct, (so much as is sufficient for that day only) without intending

to provide for the morrow: and if the owner asks, it should be confessed to him when he asks,"—there is none of those three incidents in theft, let the same be the case in the acceptance of presents from improper persons, and in the like. For otherwise, in both the instances, the five great sacrifices and the like could not be performed by such property. It may be objected that upon the assumption that the notion of property is derived from the Sástras, how can the prohibition of theft which is not recognized (by the Sástras) as a means of property,—be justified? Hence it must be admitted that there is an indirect recognition of it by reason of its inclusion under "seizure." For otherwise the prohibition itself would be unreasonable. Also for fear of the objection that in the case of the prohibition of what has been enjoined by the Sástras, obedience would be optional, as in the instance, "The initiated are not to perform the *homam*," it must *ex necessitate* be acknowledged either according to the opinion of the author of the Bhásya, that the injunction refers to cases other than what are prohibited, or according to the other opinion, that agreeably to the rule governing general and particular provisions the prohibition which is particular supersedes the general injunction (in the cases to which the prohibition refers). But the acceptance of presents &c., as means of acquisition for Bráhmaṇas &c., have been declared (by the Sástras); hence in the event of distress and in its absence, the exception (to the prohibition) and the prohibition respectively are very reasonable. If it be objected that, in that case a Bráhmaṇa would by accepting presents from improper persons and by personally carrying on trade and the like, otherwise than in the emergency of distress, be liable to judicial punishment. (The answer is) be it so; for it is not held by any one, that there is no judicial punishment for one who renounces the duties of his class. The punishment again which is to be inflicted in particular cases, is what is generally provided, while in some other cases it is specifically laid down: but this is a different question altogether. Hence there is also another defect in the opinion of those who maintain that the notion of property is derived from sacred authority, namely *multiplicity*, inasmuch as the prohibition of theft (according to

them) implies three things (namely, the non-generation of property, the infliction of punishment and the liability to penance); as well as the *multiplicity* consisting in the admission of the limitation of a general proposition. But in the opinion of those who assert that the notion of property is derived from profane authority, the prohibition implies punishment and sin only; because it is a matter derived from profane authority that theft and the like are not the means of property: and as the prohibition refers to what may happen under the influence of the springs of human action, there is no defect in the shape of the admission of the limitation of a general proposition. Hence (in this opinion) there is *fewness* (of assumptions as opposed to *multiplicity* in the other opinion). Therefore if the notion of property were held to be derived from sacred authority alone, then acceptance of presents from improper persons, and the like being not (lawful) means of property the father could have no right to what is so acquired; consequently as there can be no partition of the property acquired by the father by means of theft and the like, so also what has been acquired by means of acceptance of presents from improper persons would be imitable. But if the notion of property is derived from profane authority, then as these also are in the world considered to be legitimate means of acquisition, therefore it is established that what is so acquired is partible. Hence the object (of the disquisition) as set forth in the *Mitákshará* is perfectly consistent with reason. The object (as set forth in the *Mitákshará*,) however, is illustrative; for agreeably to the adverse opinion, the sons &c., would have been liable to punishment and penance even in taking paternal property acquired by improper acceptance &c., just as in taking what has been acquired by the father by means of theft and the like. (To obviate) this too is to be properly considered as an object (of the disquisition) by reason of what has been said (in the *Mitákshará*), namely "The acquirer alone is to perform the penance."

47. But this question ought to be solved here,—namely, if the notion of property is derived from profane authority, and it is a matter established by profane authority,

that theft is not a means of property, then, when theft is allowed in the emergency of fasting for three days together, whether or not property arises in what is stolen accordingly. The first (alternative) is not tenable; for it being established by profane authority that theft is not a means of property, the generation of property by theft cannot be maintained. Indeed a fact against the authority of the senses, such as the generation of acid curd by water, cannot be established by a thousand texts. Neither is the second tenable; for the five great sacrifices which are principally considered cannot be performed by what is not property. Nor can it be said that let that stolen property accomplish only the gratification of the appetite and not any religious rite; because that would be contrary to the practice of the learned, and because it is ordained that,—“The learned never partakes of it without performing the five great sacrifices: the very same food which a person partakes in this world, is offered to his gods.” Accordingly the following anecdote is related in the Puráñas:—“When Visvámitra having stolen a hind leg of a dog from the house of a butcher, and having made up his mind to partake of the same, and to offer a portion of it to Indra and the other gods, was about to present to the gods their share, then Indra and the other deities created rain, and abundant crops instantly sprung up.” But if property be held to be a matter derived from the Sástras, then the generation or the non-generation of property by theft and the like,—as is laid down by the Sástras, are not contradictory. While those who maintain that the notion of property and the means of its acquisition are derived from profane authority, are fixed on the horns of a dilemma.

48. The above argument we meet thus: Although it is not deduced from profane authority, that theft is a means of right, still it is derived from the very text cited above, which authorizes theft at the time of the seventh meal, by one who has not taken food during the time of six meals. But the position that the notion of property is solely derived from the Sástras is untenable, inasmuch as purchase and the like transactions that can be accomplished by property would be unaccounted for among those who are

ignorant of the Sástras. Hence the prohibition of theft indicates punishment and sin only ; but it does not imply non-generation of right, since generation of right by theft is not recognized. As for instance although the class Bráhmanyam is perceptible in all (the individuals constituting the class) still in so far as regards the superiority of the caste, it is deduced from the Sástras alone ; because the rules regarding the superiority and inferiority of men are derived solely from the Sástras. Thus the venerable preceptor says—“But here this much only is to be admitted as derived from the sacred authority, since this rule regarding the superiority and inferiority of men is not deducible from profane authority.” He further says :—“ Then again, the class Bráhmanyam is manifested in an individual descended lineally from a particular person ; hence what is derived from the Sástras is only the relation between that which is manifested and that whereby it is manifested, (*i. e.* between the class Bráhmanyam and the descent from a particular person) : and the class Bráhmanyam in an individual described above, is certainly perceptible to a person who is conscious of that whereby it is manifested ; inasmuch as there are all the conditions for the perception of the class after the perception of the individual.” In the present case, however, unconditional theft alone being considered to be not a cause of property, only the generation of property by theft under the circumstances mentioned is taught by the Sástras. Nor can it be said that it is against the authority of the senses, and what is against the authority of the senses cannot be taught by a thousand texts. Because the non-generation too (by theft, of proprietary right) is not a matter derived from perception : but inasmuch as what is a means of property is deduced from the co-existence and the absence of separate existence, of that means and of the free use of property acquired thereby,—the fact that theft is a means of property is not deduced, since stolen property (as such) cannot be applied to any use. Just as the production of a son by means of the sacrifice for a son,—a fact which is beyond profane authority, is taught by the Sástras, notwithstanding there are visible means for the generation of a son ; let the same be the case here also.

As for the sacrifices aiming at heavenly happiness, which are purely spiritual in their consequences, there is in addition the absence of visible means: but that is a different question. As (for another instance) the fact that the reviving *mantras* have the power of producing the burning property (of fire) which has been counteracted by any neutralizing agent is known from the Sástras such as the Arthavan, since it is not deducible from profane authority. Because it cannot be asserted that the reviving power is anything more than the causality of an effect counteracted by a neutralizing agent; since (if the power be held to be a separate substance, then) there would be great multiplicity in supposing the destruction of the power and the production of it.

49. As for what Jímútaváhana has, while refuting the position that right accrues by birth, said,—after explaining that the intention of the ancient passage, viz., “Sometimes by birth,” is to indicate the mediate cause, since birth is the cause of the relation of the father and son and the demise of the father is the cause of the (son’s) right;—and anticipating the objection, viz., how can the son’s right arise by the father’s act consisting in the generation?—namely;—“The production of the right of one person even by the act of another is not inconsistent, it being based upon the authority of the Sástras; and that is also seen in the world, since in the case of donation, the donee’s right to the thing arises from the act of the donor, namely from his relinquishment in favor of a sentient being. Neither is the right (of the donee) created by (his) acceptance, for then the acceptor himself would (virtually) be the donor; since gift consists in the effect of raising another’s right to the property, and that effect would here depend on the donee. Just as a sacrificer (*i. e.* the person at whose cost and for whose benefit a sacrifice is performed),—though making relinquishment of (his right) to the things offered to the gods—is not called the *hotá* (the performer of the *homam*), but the priest alone is denominated the *hotá*, as performing the act of throwing (the things in the sacrificial fire) which is the reason of the name *homam* (being applied to the ceremony). The same would be the

case here. Besides the term gift is used even previous to the acceptance (by the donee), in the following sacred text,—‘Thinking in the mind of the intended donee shall pour water on the earth : an ocean has a limit, but a gift has none.’ But is not receipt acceptance ? For the affix\* in the word *svikāra* (acceptance) implies a thing becoming what it before was not ; and the act of making his own, what before was not his, constitutes acceptance or *svikāra*. How then can right (of the donee) accrue antecedent to that ? The answer is, though right has already arisen, still it is by the act of the donee consisting in the knowledge that the property is his own, rendered capable of being dealt with according to pleasure ; and such is the meaning of the term acceptance (*svikāra*). From its association with officiating as a priest and teaching, receipt (*pratigraha*) is, without question, a mode of acquisition though it do not immediately create proprietary right : for in the case of officiating as a priest, and so forth, right (in the wealth so gained) arises solely from the gift of the fees. Or the survival of the son at the time of the father’s demise, may constitute his acquisition. Besides in the case of property left by a brother or any other relative, the right of the rest of the brethren or other heirs must, however reluctantly, be acknowledged to arise either from the death (of the proprietor) or from the survival of the rest at the time of his decease. Let the same be the case here also.”

50. But this is not tenable. For the argument, “it being based upon the authority of the Sástras,”—has already been obviated by the demonstrated conclusion that the notion of property is derived from profane authority. As also for what has been said in the passage,—“And that is also seen in the world &c.,”—that too is only specious ; for should the donee refuse to accept, his right certainly does not arise ; again, if by (mere) relinquishment in favor of a particular person, his right accrued, notwithstanding his refusal to accept (the gift,) then it would follow that the donor could not possibly grant (the property relinquished in favor of a particular person) to any other person. As also for the argument, “for then the acceptor

himself would (virtually) be the donor ;" that again is not consistent with reason ; because, gift being an act whereof the effect is the generation of another's right, the term gift implies the act of inference &c., (by the donor) in favor of the acceptance by the donee, but the production of that effect is not possible without the acceptance by the donee; hence the act of the donee completes the gift, but that alone does not constitute the gift. As also for what has been said in the passage " just as &c.,"—that too is not correct. For the distinction does not obtain in the *agnihotra* and the like *homas* which are (personally) performed by the sacrificer ; again in the *darsapúrnamásá* and other sacrifices where the relinquishment only is made by the sacrificer, but the offerings are (actually) thrown (in the sacrificial fire) by the priests, the function (of the priests) being distinct (from that of the sacrificer,) the use of the term *hotá* (for a priest) implying that function, is not open to exception.. The term *homa*, however, does not signify the throwing (by the priest) of what has not been relinquished (by the sacrificer). But whether that relinquishment which is the distinctive feature (of a *homa*) is carried out through the agency of one's self, or through the agency of another person, that makes no difference. Hence a sacrifice (*yága*) does not depend, for its completion, on the throwing (of offerings), but a *homa* depends on that alone. The act of the donee, however, is the *sine qua non* of gift, for without it gift cannot be accomplished.

Again what has been said in the passage, " Besides &c.," that also is nothing. For abdication alone is ordained therein, but not gift ; accordingly it has (subsequently) been said that "the donor reaps its fruit," for otherwise this (portion) would be superfluous. Had the fruit of gift been otherwise deducible in what is intended for gift, the passage "the donor reaps its fruit," would have become useless. Hence what is intended by the verb "give" (in the term gift) in the passage cited before, is abdication only—consisting of the pouring of water, in favor of the intended donee, but the completion of the gift takes place only in case of acceptance by the donee of what is so abdicated. This is the best interpretation. Accordingly, in the formula for declaring the

intention (of making a gift,) the expression used by the learned is, "I abdicate," and not "I will give" or "I give." Hence, although the fruit of gift arises (before acceptance), still because the right of the donee accrues from acceptance, therefore the proposition that acceptance is an acquisition, is not liable to exception. For the term acquisition means an act producing property. Accordingly Prabhákara says:—"This has been irrationally asserted by some one: to say that acquisition does not produce property is a contradiction in terms." The text of this has already been explained. Moreover if acceptance, consisting in the knowledge that this property is mine, did only render that property to be capable of being dealt with, wherein the right accrued merely by the act of the donor, then the term acquisition as applied to acceptance would be metaphorical in its meaning; and the bestowal of that property on any other person (in case the intended donee refuse to accept the gift) would be, as mentioned before, unreasonable; also in case of his non-acceptance, the destruction of his right already produced will have to be assumed. Nor can it be said that it must be acknowledged by you also, that by the act of the donor his right being extinguished, a common right of donees is produced; otherwise if his right be extinguished and no other's right accrue, then the thing being without an owner, the right of any person might, by means of seizure &c., arise in that thing, just as in grass, fuel, &c. of a forest, which have not been appropriated, and the preservation (of the thing by the donor so long as it is not given to any other person) would be impossible: so also in our opinion, the right of a particular person produced on the abdication in favor of that particular person, is extinguished by his non-acceptance, and the right of another arises by his acceptance; thus there is no such contradiction as the destruction of a common right and the production of an exclusive right (which you cannot but admit). Because a common right in such a thing being not recognized, the production thereof is without authority, and is neither acknowledged by reason of *multiplicity*. But notwithstanding the extinction of the donor's proprietary right, consisting in the capability of being dealt with according to pleasure, the gift

itself being incomplete in the absence of the effect, namely, the production of another's property, the donor who aims at attaining the merit held out by the injunction (for gifts) certainly retains the right of preserving (the subject of the gift) till the bestowal (of the same on some other fit person); in the same way as (a sacrificer has the right of preserving) the clarified butter poured on the sacrificial fire until it is burnt to ashes, by reason of the declaration of imperfection which would otherwise be the consequence of non-conformity with the prohibition of (the offering) being touched by what should not be touched. Hence it follows that although another's right be not generated, still there is no harm in not preventing (by the supposition of a common right) the (supposed) consequences of the thing being without an owner, and of its seizure. Upon this alone is based the practice of the learned, consisting in the preservation of the subject of gifts (to men and gods). Nor can it be argued that the injunction being assumed by us to refer solely to abdication, the fact of the production of another's right would not at all be important, because abdication, such as is described above, is what (we say) is intended by the injunction, for otherwise in the case of *homa* also, the state of being burnt to ashes would be unimportant.

As for what has been said, namely,—from its association with officiating as a priest and teaching, acceptance though it do not immediately create proprietary right, is still an acquisition in a metaphorical sense only,—that also is from ignorance. Since in the case of officiating at a sacrifice, the shares to which the priests and others are entitled, are, at the time of distributing the fees (*dakshinā*), allotted to them in the shape of wages. Accordingly in the aphorism of Jaimini, viz., "Salary is the service of a master," the use of salary (to signify the fees) has been ascertained: the details, however are to be found there. Salary is no other than the wages causing inducement of a servant. So also, in teaching, the pupil at the end of his education gives to the teacher such wages for teaching as satisfies him. But in case of regular service for wages, the paid tuition is *quasi* degradation. Hence as distinguished from acceptance as well as from service (*nirvesu*) implying

(regular) wages, officiating at a sacrifice and teaching have been separately enumerated as being a mixture of both. Hence these too are acquisitions in the primary sense. Accordingly also the term *honorarium* (*dukshinā*) is applied to what is given to a priest and a teacher.

As also for the argument that it is undisputed that in the property left by a brother or any other relation the right of the rest of the brethren or other heirs is produced either by the demise of the owner or by the survival of the brethren &c. at the time of his decease; therefore also in the case of sons &c. let the demise of the father &c., or the survival at the time of their decease, be the cause of right, but not the birth of the sons &c., which is not applicable to all cases;—that also has been already confuted by showing that it must be admitted that birth is a cause of right.

51. As also for what has been said, namely, that if birth be held to be a cause of proprietary right, then the text of Manu, viz:—"After the father and mother &c.," cannot consistently be explained;—for if it be considered to mean the prohibition of previous partition, then the objection would arise that it intends a meaning not its own; and as the purpose of partition is mundane, an injunction for partition as well as an injunction for its time is impossible. Nor can it be taken to mean an obligatory injunction regarding partition which stands (but for this injunction) optional, for in that case there would be a conflict with the injunction regarding dwelling together; therefore it must be admitted that the text is intended for establishing that while the father and the mother are alive there is no ownership by birth to their property, but that it is on their demise that the right of the sons &c. accrues to their estate.

52. The above argument is extremely unsound. Because the objection that it imparts a meaning not its own, is equally applicable (to the view taken by him); and because there can be no incongruity in considering the above text to be an injunction as to the time for partition, inasmuch as there was no independence (of the sons) before

(the demise of the father); and because even it be held as a superfluous injunction regarding the time (for partition) which proceeds from the desire (of the co-sharers for partition) there can be no impropriety, it being a text on positive law.

Hence is obviated also the objection that partition would be admissible only at the moment immediately following the father's decease, for there is not in this instance any particular objection like the danger to the new-born infant's life in the case of a sacrifice on the birth of a son,—against the immediate sequence of the effect (when the cause is present). Neither is the causality of the father's decease indicated by the injunction regarding the time for partition, for otherwise, as the effect must necessarily follow the cause, it would be sinful if partition be made after the death of the parents (and not immediately on their death). Moreover the extinction of the father's right arises also from degradation and retirement: but the right (of the sons) by birth holds equally good (in these cases). In the case of degradation, however, the extinction of right and the disqualification for participation arise only if expiation be not performed. Otherwise penance too, which can be accomplished with (one's own) wealth, could not be performed by the parents with their own wealth.

Accordingly, (it must be admitted that) the following text also, namely, "When the mother is past child-bearing &c.," declares an injunction with reference to the time for partition. There is not, however, in that event the extinction of right as in degradation &c.: but the extinction of (the father's) right is deduced solely from profane authority as well as from the prohibition of (his) participation, as in the case of a brother and others (who are excluded from inheritance by reason of disqualification); this will be mentioned (hereafter).

53. Moreover, Jímútaváhana himself appears to give up his prior contention, and to admit partition by sons even when the father's right is not extinguished; for he has, after having asserted that—"Thus there are two periods of partition: one, when the father's right ceases; the

other, by his choice while his right endures,"—and then meanwhile having found fault with the three periods of partition mentioned in the *Mitáksharā*—come to the conclusion that,—“Therefore two periods of partition are rightly affirmed: one, when the father's right is extinguished by degradation, extinction of temporal affections and death; the other, by the choice of the father while his right subsists.” Now how does (in the latter case) the right of the sons arise in the property of the father? And how is it that there is no conflict with the texts ordaining absence of ownership (of the sons) while the parents are alive? Partition being impossible of what is not property, how can partition be made by them? Where is the consistency of one part with another of his (*Jímítaváhana*'s) own book? For (in another part) he says, “The cessation only of the father's right is intended by the text, ‘After (the demise of) the father and mother &c.’; with this purpose the term *after* is used instead of the term *dead*: the meaning being “after the cessation of the father's right, and the cessation of the father's right arises as well from his degradation and extinction of worldly affections as from his death &c.”

Again he says:—“Here also, as it is indicated that the son's right in the father's wealth arises from such causes as the extinction of the temporal affections, this is one period of partition.” Now if by the term, “from such causes as the extinction of the temporal affections,” the cessation alone of the father's right be intended, in that case it is contradictory to what has been said, namely, the other period of partition is by the choice of the father while his right subsists.

Again when he maintains that the survival alone of the sons and others at the time of the extinction of the father's right is a means of acquisition, how can he assert the right of the sons to the property of the father while the father's right subsists. Certainly the father's right cannot (according to his opinion) cease simply by reason of the mother's being past child-bearing in the absence of the father's retirement to a forest; therefore it becomes difficult to apply the term ‘heritage’ to the property whereof partition is made while the father's right is not extin-

guished ; for the meaning of the term heritage as explained by himself is wanting, viz. : “ The term heritage is technically used to signify wealth in which right dependent on relation to the former owner arises on the extinction of his right.” These and similar confusions arise (in pursuance of the doctrines propounded by Jimútaváhana).

54. But it is to be observed by those that are unprejudiced that every thing becomes consistent if right by birth be admitted. Accordingly in the Mitákshará and other works it has been said that the term *heritage* signifies that wealth wherein another’s right arises dependent on relation to the former owner : but the phrase “ on cessation of the previous owner’s right” has also not been inserted in it. Hence it is established that heritage is two-fold.

The argument in support of the three periods of partition mentioned in the Mitakshara will be set forth at length when that subject will be dealt with ; there is no use of discussing here what is incidental to the subject under enquiry.

55. The term ‘partition’ has been explained in the Mitákshará, thus, “ Partition is the adjustment into specific portions, of divers rights arisen in the entire estate.” But Jimútaváhana introduces this definition as the opinion of the adversary in the following passage,—“ Nor can it be affirmed that partition is the adjustment into a particular portion of that right which all the co-sharers have through the sameness of their relation over the entire property ;”—and then finds faults with it, thus,—“ Because the relation (of one co-heir to the owner) opposed by the co-existence of another relative produces a right—determinable by partition—to portions only of the estate ; for (otherwise) there would be *multiplicity* in the assumption of the accrual and extinction of a right to the entire estate ; and it would be useless as there would not result the effect, viz. the power of dealing with the property according to pleasure ;” and then goes on,—“ What we say is, that partition consists in the act of manifesting, by the casting of lot or otherwise, the right which had arisen in lands, gold &c. and which extended only to a portion of them,

and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed; or partition is the act of ascertaining the right or of making it known,—by the derivation of the term.”

56. The author of the Dáyatattva has referred to this view of Jímútaváhana, and censured it thus:—“ For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

“ Again if wealth be gained after the father’s demise, by a brother riding one of two horses, which belonged to the father, it is universally acknowledged, that two shares of it appertain to the acquirer; and one to any other co-heir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his; why then should another brother share the wealth gained by him? But if the horse be obtained by another, equal participation of wealth so acquired would be proper, since it is gained by the personal labour of the one and by the work of a horse belonging to the other.

“ But in fact, partition is the adjustment by lot or otherwise into a right over a specific portion, of that right which did, by reason of the same relation of the co-heirs, accrue to the whole property, upon the extinction of the right of the previous owner.

“ Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the re-union of co-heirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowledged.

“ This too is (in a manner) acknowledged by the author of the Dáyabhága who himself writes:—In the following text of Vrihaspati, namely: ‘ He who being (once) separated dwells again through affection, with his father, brother or paternal uncle is termed re-united,’ because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards

the property acquired by the father or the grandfather ; they alone may become re-united, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one house-holder in any transaction. But not an association of merchants who, unlike the co-parceners, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated co-parceners without the stipulation based upon affection (are to be looked upon as instances of re-union).

“ By reason of the right being common, the text of Kátyáyana, which says : ‘ A co-parcener is not liable for the use of any article which belongs to all the undivided relatives,’ becomes consistent in its literal sense ; inasmuch as his own right extends over every article ; accordingly there can be no theft in such a case, as will be shewn hereafter.

“ Similarly also, by the text of Nárada, namely : ‘ Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents,’ the prohibition of mutual gift &c. amongst undivided co-parceners becomes logically consistent ; because (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor had a right to the property given, even before a gift of it was made.

“ All the co-parceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property ; since their right is common. This is affirmed also by Nárada : ‘ Among undivided brethren, duties continue common ; but when partition takes place, their duties also become different.’

“ Vyasa ordains : ‘ Let no one without the consent of the others, make a sale or gift of the whole immoveable estate nor of what is common to the family.’ Here, from the use of the adjective ‘ whole,’ it appears that the right of each parcener accrues to the entire estate.

“ Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased to belong to himself as well as to the other coheir. Gift and the like by the one for his own pur-

pose, is prohibited, should the other's consent be wanting.

"Therefore it is established that the right does not accrue to a fractional portion."

57. It appears that this is subscribed to also by the author of the *Mitákshará*; for, he says: "Partition is the adjustment into specific portions, of divers rights which have arisen in the entire estate."

But what is to be decided here is this: Whether ownership inhering in the owners and determined by the whole of the property, also whether property inhering in the entire estate and determined by the owners, exists jointly in all or exists separately in each? The first (alternative) is not tenable. Since in case of destruction of any one of those in which the ownership or the property inheres, there would be great *multiplicity* in assuming their destruction, and the production of them in all the remaining ones; and since the dealing with any article by any one (of the co-owners) would be impracticable in consequence of the want of power (in any one co-owner) of giving away or selling or using in any other way, according to pleasure. Neither is the second (alternative) tenable; because on partition the destruction and the reproduction of all of them would have to be assumed; and because that would be contrary to the following passage (of the *Mitákshará*), *viz.* "Partition is made of what was property, but property is not generated by partition."

What we say here is this:—there are certainly rights existing separately in each, by reason of the sameness of the relation: when partition takes place amongst the co-owners, the right of each ceases to what is allotted to the others, in the same way as by death, retirement and the like: so there is no inconsistency. And this is what is meant by "adjustment;" otherwise, the generation of right to a specific portion would have been used. Accordingly the cessation only of the right is assumed, but the production of a different right is not assumed. Agreeably to the opinion of *Jímútaváhana*, it being not determined previous to partition, as to what property the right of a co-sharer accrues in reality, there would be an end of all temporal

affairs as well as spiritual ones enjoined by the Sruti and the Smriti ;—which can be performed by wealth. You (Jímútaváhana) impute to the author of the Mitákshará, the defect of *multiplicity* for his assumption of the destruction and the production of rights, but yours is a still greater one (that of inconsistency) when you admit the production of a different right of each (of the co-sharers) in the property of the others by consent given by all (on re-union) after partition. You ascribe uselessness to the right over the entire estate by reason of its unfitness for use : but the same is equal if the right be admitted to arise in a fractional portion. There is no use in spinning out the matter.

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## CHAPTER II.

### LAW OF PARTITION.

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#### PART I.

Sec. 1—8. When and by whom partition is made.—9. Distribution by the father not arbitrary.—10. Of allotment of shares to wives.—11. Of equal Distribution.—12. Father's double share in self-acquired property.—13. Not so in ancestral property.—14. Equality of shares preferable in all cases.—15. Partition with one who wishes not to take any share.—16. Partition of heritage extends to the third degree; participation *per stirpes* not *per capita*.—17. Of partition of ancestral property recovered by father and of the father's right of disposal.—18. Mother's life no bar to partition.—19. The mother entitled to a share.—20. Initiation of uninitiated brothers.—21. Marriage of sisters, &c.—22. Of alienation of immovable property.—23. Partition may take place at the desire of a single co-sharer.—24. Of a co-sharer born after partition.—25. Of partition by brothers of different classes.

1. Now are determined the periods, when, and the persons by whom, partition may be made.

On that subject Manu says:—"After (the death of) the father and also the mother, the brethren being assembled together shall equally divide the paternal estate; for they are not masters while those are alive."

"Paternal," signifies, belonging to the parents, since both are previously mentioned: hence by the phrase "after the father," a period of partition of the paternal property, is expressed; and by the phrase "after the mother," a period of partition of the maternal property, is shown; the term "and also" (*cha*) however, is used for the purpose of indicating other periods, but not for the purpose of laying down the restriction, (that partition is to be made only) "after the death of both," for the mother's life does not constitute a bar to the partition of the pater-

nal property, nor the father's life to the partition of the maternal property.

Accordingly the author of the *Sangraha* says :—“ Partition of paternal property may take place notwithstanding the mother is alive, because in the absence of the husband, the mother has no independent ownership (in the property of her husband); likewise also the partition of the maternal property may be made while the father is alive, for when there are children, a woman's lord is not the lord of her property.” The meaning is : Inasmuch as, when there are sons, the mother has not independent ownership in the property of her husband even after his death, therefore even while she is alive the partition of the paternal property is reasonable ; and because the husband has no right to the property of the wife, when there are children, therefore even while he is alive the sons are entitled to divide the maternal property.

Hence also the text, “For they are not masters while those are alive” is to be held as establishing the absence of independence in respect of the property of the father and mother respectively ; and not as establishing the absence of right, since it has been demonstrated that the sons' right to the property of the father (and the mother ?) accrues by birth.

In the following text, namely,—“Should the father effect partition, he may separate the sons at his own desire, or (may separate) the eldest son with the best share ; or all may be equal sharers ;”—*Yájnavalkya*, by declaring that the father may separate the sons at his desire, indicates that while the father is alive, that too is a period of partition when the father feels a desire for it. In that case, again, the father alone is the person who is competent to make partition ; since the want of the sons' independence has been established by the text, viz.,—“For they have no right while the father is alive and free from defect.” From the adjective “free from defect,” it appears that what is meant is, that although the father be alive who has defects like degradation, still because the sons are not required to remain under his control, therefore that too is a period of partition when they desire ; and in that case the sons are competent to make partition.

There is also another period of partition at the desire of the sons, namely, when the father feels no concern for property and has his sexual appetite extinct, and the mother is past child-bearing. Thus Nárada having spoken of partition after (the demise of) the father, in the text, namely,—“Hence after (the demise of) the father, the sons may divide his estate equally;”—goes on to say:—“Also when the mother is past child-bearing and the sisters have been given in marriage; or when the father’s sexual propensity has become extinct and his affection (for property) has ceased.”

Jímútaváhana, however, reads the text as “the father is lost or houseless,” (instead of “the father’s sexual propensity has become extinct;”) and explains that “lost,” means, degraded; and “houseless,” signifies, no longer a householder. He also says that the reading, viz.,—“the father’s sexual propensity has become extinct,” is unauthorized. But this is unreasonable, for that reading has been adopted in the Mitákshará and other commentaries. The passage “the sons may divide his estate” (occurring in the preceding text) is to be construed with the latter text (of Nárada).

Gautama also, after declaring,—“After (the demise of) the father, the sons may divide his wealth,”—goes on to say,—“Also in his lifetime, when he desires, if the mother be past child-bearing.”

Also Vrihaspati ordains,—“On the demise of the parents, partition among brethren has been declared; it may also take place while they are alive if the mother be past child-bearing.”

Again even when the mother is capable of bearing more sons, and the father is unwilling, partition may take place at the desire of the sons, if the father suffer from a lasting disease or be addicted to vice. Thus Sankha says:—“Partition of inheritance may take place against the will of the father, if he be old, diseased, and have his intellect perverted;”—also Nárada says:—“A father who is afflicted with disease, or is influenced with wrath, or whose mind is engrossed with a beloved object, or who acts otherwise than the Sástras permit, is not competent to make partition.”

2. To what has been said on the subject in the Mitákshará, namely, that the father's death is one period, when the mother is past child-bearing is the second, and the third is in the lifetime of the father when he desires,—the following objection is raised by Jímútaváhana :—“ If the cessation of the mother's courses be joined, as a condition, with the extinction of the father's affections, then since the nubile age is ordained by Manu in the text, viz.,—‘ A man of thirty years shall marry a lovely girl of twelve years ; or a man of twenty four, a girl of eight years : one who marries sooner deviates from virtue ;’—and since the same sage ordains the age in which a man should adopt another order, in the text,—‘ After fifty a man shall retire to a forest ;’—therefore at that time, the cessation of the mother's courses being impossible, there could be no partition at the desire of the sons although the father become a hermit or his temporal affections be extinct. If it be said that the extinction of the father's temporal affections without the condition annexed to it, constitutes a period of partition of paternal property, then even when the father is degraded partition could not take place if his temporal affections be not extinct. If it be alleged that this too is another period of partition, then there would be four periods of partition, viz., the demise of the father, his degradation, the extinction of his affections and his desire. Hence two periods only are reasonable : one, when the father's right ceases by death, degradation or the extinction of temporal affections ; the other, at the pleasure of the father while his right subsists.”

This objection has arisen from not understanding the intention of the author of the Mitákshará. For he does not lay down the restrictive rule that there are only three periods of partition ; because he does immediately establish other periods by the passage ‘ likewise, &c.,’ and because there is no reason for such a rule. The proposition, again, that one period of partition is on the cessation of the father's right, and the other, at the father's desire although his ownership have not ceased,—is erroneous. Since in that case, the text, “ when the mother is past child-bearing,” would become unmeaning, for the father's right is not extinguished by reason of the mere fact of the cessation

of the mother's courses ; and since the cessation of the father's right cannot possibly be the occasion of partition, inasmuch as right has been established to accrue by birth. Similarly also, right does not cease under the circumstance of being afflicted with a lasting disease ; hence also the restrictive rule asserted by you that there are only two periods of partition is difficult to be maintained. Nor can you say that you approve the proposition that right does not cease when the father is afflicted with a lasting disease, for it would be contrary to the text which enjoins partition on that event.

3. As for what has been said by the same author, namely,—“The condition ‘when the mother is past child-bearing,’ refers to the property inherited from the grandfather and other ancestors. Since, the mother being past child-bearing, the birth of more sons becomes impossible, hence partition among sons may then take place, but by the choice of the father, for if ancestral property were divided while the mother was capable of bearing children, then those born subsequently would be deprived of subsistence ; nor is that reasonable, for it is ordained,—‘Those who are born and those who are not yet begotten, as well as those who are in the womb, all require maintenance ; the dissipation of their hereditary source of maintenance is censured.’—Inasmuch as there are two periods for partition of paternal wealth, therefore Manu, Gautama and other sages have used the term ‘after,’ leaving the term death. ‘After,’ signifies, extinction of the father's right. But if the above text referred to paternal property, then the text,—‘But one born after partition shall take the father's share only,’—would be without any subject to which it may be applicable, because there is no possibility of the birth of more sons, when the mother is past child-bearing ; nor can it be at all supposed to relate to the mother's estate, for in that case the mother would be deprived of her property. Hence the condition ‘when the mother is past child-bearing,’ refers to the estate of the grandfather. Nor can the circumstance of the mother being incapable of bearing more children be a cause of partition independently of choice, for there can be no partition without a will to effect it ; then

the question occurs, whose must that will be ? and the solution is that it must be the father's will, as deduced from the text of Gautama, which says,—' After (the demise of) the father, the sons may divide the estate, or while he lives if the mother be past child-bearing, and he desires it.' Hence there are only two periods for partition of the grandfather's estate ; one is, when the parents are no more, and the other, when the mother is past child-bearing and the father desires it."

This too is, but the effect of carelessness : because the objection of dissipation of the subsistence is equally applicable to paternal property ; and because the objection that the text, ' But one born after partition, &c.,' would be without a subject, holds equally good in case that text be held to refer to the estate of the grandfather and other ancestors ; also because it cannot but be admitted, as it is universally admitted, that when a father who retains his temporal affections becomes tainted with degradation and the like, partition of even the grandfather's estate may take place at the desire of the sons. But as it will be established that in the property of the grandfather, the ownership of the father and the sons is equal by reason of texts such as,—" The ownership of the father and the son is the same &c.,"—therefore in fact partition thereof at the desire of the sons is not improper. As for a different interpretation of the above text, and the supposition that the absence of mastery relates to his estate &c., all these will be refuted on the occasion of considering that text.

4. We say that there are only three periods of partition in this way, namely, when the father is alive and worthy of independence, his desire alone is the cause of partition ; but if he is not worthy of it by reason of degradation, mendicancy and the like, then the desire of the sons only ; on the demise of the father, however, the causality of the sons' desire, necessarily follows. Otherwise there would be great confusion, for it would be unreasonable to suppose that the circumstances, namely, extinction of desires and the like, do sometimes separately and sometimes conjointly constitute the cause of partition, and because it would be difficult to discriminate between what

constitutes the principal cause and what its concomitants. Hence in certain texts the enumeration of some of the circumstances and the omission of the others become consistent.

By reason of the simplicity of the supposition of one radical revelation, all the texts should be considered to indicate only the absence of the father's independence by 'extinction of desire' and the like. To this very effect is the import of texts like the following :—“For they are not masters while the parents are alive :” (Manu). “For sons have not ownership while the father is alive and free from defect :” (Devala). “And it is right even while they are both living :” (Vrihaspati).

Hence Vyāsa and other sages have declared two alternatives, namely, one which is preferable, is the common abode of brothers while the parents are alive ; the other, where by their consent and the like, the eldest or any other who is capable of managing the affairs of the family becomes the head of the family and the rest live under his control. Thus Vyāsa says :—“For brothers, common abode is ordained while the parents are alive.” Hárīta declares,—“While the father lives, the sons have no independence with regard to receipt, expenditure and deposit of wealth. But if he be deceased, remotely absent, or afflicted with disease, let the eldest manage the estate.” Sankha and Likhita, however, most clearly declare,—“If the father becomes incapable, let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business; partition of the wealth does not take place, if the father be not desirous of it; when he is old or his mental faculties are impaired, or his body is afflicted with a lasting disease let the eldest like a father protect the goods of the rest; as (the support of) the family depends upon the wealth, they are not independent while they have their father living, or while the mother is so.”

Therefore there are only three periods for partition, in the way mentioned above.

5. In the text of Manu on this subject the term “assembled together” only recites (but does not enjoin) the

assemblage (of co-sharers) which may take place, like the plurality (recited by the plural number in the term "brethren,") otherwise partition could not take place, at the desire of one co-parcener or where there are two brothers. The term "equally" however is restrictive; but this will be fully considered hereafter.

6. Jímútaváhana says:— "Since the term 'parents' (in Vrihaspati's text) bears the dual number, therefore partition by uterine brothers, of even the paternal property should be made only on the demise of the mother. But the use of the mother's demise has no reference to the partition of the mother's estate; because the text 'even while they are living' cannot consistently refer to the mother's estate, therefore it must be admitted to refer to another's property: hence, because by the term 'even' in the text 'even while they are both living,' the existence of the parents is declared to relate to the very same case to which the non-existence of the parents stands as the cause, therefore the demise of the mother ought not to be interpreted as referring to the estate of the mother."

But this is not consistent; for in the text of Manu the terms 'father' and 'mother' are separately set out: also where it is otherwise, (as in Vrihaspati's text) it is reasonable to interpret the dual number as only intending reference to partition. If it were not so, then there would be no earthly reason for connecting the property of one with the demise of another.

What again is the meaning of the passage, namely,— "Because the text, 'even while they are both living &c.' cannot consistently refer to the estate of the mother &c." ? If it be that the text does not refer to the property of the mother, by reason of the absence of her independence while the father is alive, in that case the father has ownership even in the property of his wife notwithstanding the sons, therefore her demise too cannot have any bearing upon that, hence would arise the objection of having reference to something else.

And as for a different meaning of the above passage, it will be shown that that is an absurd assertion. Hence the proposition, affirmed by the author of the Sangraha

and others,—viz., that the mother's demise relates to her property,—is consistent; since the reason is earthly.

7. The common abode of the brethren, however, is preferable, as while the parents are alive as likewise after their demise. Thus Sankha and Likhita declare,—“They may live together if they please, for being united together they may attain to prosperity.” The meaning is, that being “united together,” i., e., dwelling together they may attain to prosperity through the assistance rendered by each other in the acquisition of property. So Nárada says.—“Let the eldest brother, like a father maintain the rest together; or let a younger brother who is capable, do so: the maintenance of the family depends upon ability.”

So Manu ordains,—“The eldest brother may take the patrimony entire, and the rest may live under him as under a father. By the eldest son as soon as born, a man becomes father of male issue, and is exonerated from the debt to the ancestors:—such a son therefore is entitled to take the entire heritage. That son alone on whom he devolves his debt and through whom he tastes immortality, was begotten from a sense of duty; the rest are considered as begotten from love of pleasure. Let the eldest like a father, support the younger brothers, and let them according to law behave like sons towards the eldest brother. The firstborn exalts the family, or on the contrary, destroys it; the firstborn is the most respectable in society, the firstborn is honored by the good in this world. If the eldest brother acts as an eldest brother should do, he is as a mother, he is as a father. But one who does not act as an eldest brother should do, is still to be respected as a relative. The eldest brother who from avarice defrauds his younger brethren shall not be considered as the eldest, shall forfeit his share and shall be punished by the king.”

Agreeably to all these texts, the joint abode of all the brethren in obedience to the eldest brother who is possessed of good qualities, is preferable.

But if increase of religious merit be desired then partition should be made. It has been so declared by Manu and Prajápati;—“Thus let them dwell together, or apart for the sake of religious merit, since religious duties are

multiplied apart, therefore separation is virtuous." Religious duties consist in the worship of gods &c., for that alone is never heard to be separate in a joint family. Accordingly Vrihaspati says:—"Among those who live in commonality, the worship of the manes of ancestors and of gods and Brāhmaṇas, is common : but among the separated the very same worship takes place in the house of each."

The author of the *Sangraha*, however, says that the term increase of religious merit, includes also the increase of religious merit by means of the establishment of the sacred fires and the like ceremonies:—thus he says,—By partition the paternal estate is rendered the property of the sons; when the right of property arises, they commence ; hence separation is virtuous: "commence," i. e. accomplish the ceremonies of establishing the sacred fires and the like.

But this has already been refuted by us when establishing the right of sons to the performance of ceremonies enjoined by the *Sṛuti* and the *Smṛiti*, even before partition by reason of the sons' right to the paternal property accruing by birth alone. Therefore by the term religious duties, are to be understood only such religious duties as the five great sacrifices.

8. The phrase "and the sisters given in marriage," is however inserted not for the purpose of marking a period of partition, but for the purpose of shewing that their marriage must be celebrated: similarly the text of Náraḍa, *viz.*,—"Whatever remains after the father's gifts are given and the paternal debts liquidated out of it, should be divided by the brothers so that the father may not remain a debtor,"—ordains the obligation of paying off the father's debts, but not a period of partition.

9. Again when the father separates the sons at his desire, then also arbitrary will shall not be exercised, but the meaning of Yogisvara's text is, that of the two methods *viz.* "Or (may separate) the eldest with the best share, or all may be equal sharers,"—that method which he chooses may be adopted.

Professor Vijnánesvara explains the above text in the following way :—“ The eldest, with the best share ; the middlemost, with the middlemost share ; the youngest, with the smallest share ; or all the eldest and the rest may be made equal sharers.”

The oriental writers, however, say that the phrase ‘at his desire’ indicates a separate method altogether, and distinct shares of the eldest and others and equal shares constitute two methods : thus there are three methods ; accordingly the first term “ or ” in the text “ or (may separate) the eldest,”—becomes significant, as having reference to the mode indicated by the phrase “ at his desire :” it would become far-fetched, had it reference to the method which is subsequently set forth.

And they assign the following reason for that (view) :—In the text of Nárada, viz.,—“ Or the father himself when old may separate the sons, either (he may separate) the eldest with the best share, or in any way he pleases,”—because one mode of unequal distribution is set forth by the passage “ either the eldest &c.,” and then it is said “ or in any way &c.” therefore it is indicated that there is also another mode of distribution by the desire of the father. Also Hárita says :—“ A father, having during his lifetime distributed his property may retire to the forest, or enter into the order suitable to an aged man ; or he may remain at home having distributed a small portion (of his property amongst his sons) and retaining a greater portion ; should he be pinched, he may take back from them.”—“ The order suitable to an aged man,” means the fourth order ; “ be pinched,” means, be reduced to poverty :—here too a different mode is expressed by the passage “ having distributed a small portion.” Therefore by reason of the same foundation (of Yogísvara’s text) with these (texts) it is reasonable to say, in order to include the above mode of partition in Yogísvara’s text, that the passage “ at his desire” (in Yogísvara’s text) indicates nothing but a separate mode.

This is wrong : for the term “ or ” does not become far-fetched (by having reference to the subsequent mode,) since it may, with propriety, be construed in either way. Neither is the reason assigned correct. Because if the object

of the phrase 'at his desire' (in Yogisvara's text) be to include another mode mentioned in other texts, then the latter half (of Yogisvara's text) would be merely unnecessary; for as those two modes also are mentioned in other texts, these may likewise be included under the phrase "at his desire": there would certainly be very little necessity if the object of that phrase were to include a mode other than these (two modes). And because desire being under no restraint, the meaning of that (other supposed mode) cannot be ascertained without consulting other texts, (but it must be ascertained) so that arbitrariness may be prevented: but there would be no necessity for consulting other texts, if the phrase "at his desire" be interpreted to be inserted for the purpose of removing the idea of any rule regarding the applicability of the two modes mentioned by (Yogisvara) himself. Nor can it be said that inasmuch as option is indicated by the very assertion of the alternative, the phrase "at his desire" is useless; since it is far more reasonable to say that the phrase though it is superfluous, is intended to have reference to the two modes mentioned by himself, with the object of removing the idea of the alternative being governed by any rule, rather than that the latter half (of Yogisvara's text) is useless.

Again, the same foundation (of Yogisvara's text) with the texts of Náraṇa and other sages, is not inconsistent with the interpretation put by Vijnánesvara; for the two modes mentioned in Yogisvara's text, are declared in other texts also. Nor can it be said that let the meaning of Yogisvara's text be, that arbitrary will alone constitutes a distinct mode; for in that case the following text would be meaningless, viz.: "A father who acts otherwise than the Sástras permit has no power in distribution"; for, if (the exercise of) unqualified will were agreeable to the Sástras, then acting otherwise than the Sástras permit, would be impossible. Had will been the only cause, then the following text of Kátyáyana also would have been useless, viz.:—"But let not the father distinguish one son at a partition made in his lifetime, nor whimsically deprive any one (of his share) without sufficient cause."—"Let not distinguish," means, let him not make any son benefitted by any arbitrary special consideration, otherwise than by the

specific deductions for the eldest and others,—as enjoined by the Sástras ; “ sufficient cause” again, is such as degradation &c., permitted by the Sástras ; “ whimsically” means, through anger or through affection towards the son of a beloved wife ; “ deprive” signifies, render destitute of shares.

As for the following text of Yogísvara, namely,—“ Among those separated with greater or less allotments, (the distribution) made by the father is pronounced, lawful,”—that again has, consistently with the text, viz.,—“ A father who is afflicted with disease or incensed with wrath &c,”—been explained by Vijnánesvara himself to mean only this :—“ lawful” *i. e.*, if in accordance with law, then what is made by the father is pronounced as finally made *i. e.*, cannot be revoked ; but what is not lawful *i. e.*, not made agreeably to the Sástras, can certainly be revoked.

Similarly are to be explained also the following texts of Vrihaspati and Nárada (respectively) :—“ Shares which have been assigned by the father to the sons, whether equal, greater or less, ought to be kept unaltered by them : else they shall be chastised.”—“ For such as have been separated by their father with equal, greater or less allotments of wealth, the same is a lawful distribution ; for the father is the lord of all.”—The meaning is that even in case of partition with the best and the like shares allotted by the father to the eldest and the like respectively, the others should not be dissatisfied ; nor should the eldest and others be so, in case of partition with equal allotments : accordingly Nárada says, that “ that is a lawful distribution.”

Partition with the best and the like shares has been declared also by Manu thus,—“ The twentieth part of the estate together with the best of all chattels, constitutes the specific deduction for the eldest ; half of that for the middlemost ; and a quarter, for the youngest.” Baudháyana has declared the case of equal shares, thus :—“ Manu distributed the heritage among his sons ; hence the share of all is equal by reason of the absence of distinction.” The meaning is, that all the sons shall have equal shares inasmuch as no distinction is mentioned in the Sruti, *viz.*, “ Manu distributed the heritage among his sons.”

10. If a father, by his own will, separates his sons with equal shares, then he must give to each of his wives a share equal to that of a son. Thus Yājnavalkya says :—“If he makes the allotments equal, then his wives to whom *woman's property* has not been given by the husband or father-in-law, shall be made equal sharers.”—To whom *woman's property* has not been given through affection &c., by the husband or the father-in-law: the mention of the husband &c. is illustrative; the meaning is, who are devoid of *woman's property* described hereafter. What is laid down is, that each of such wives is entitled only to a share equal to that of a son. Thus the following meaning is deduced :—When the father separates his sons even with the best and the like shares, then also after having deducted the best and the like shares he shall, out of the whole property from which the specific deductions have been made, allot to each of his wives a share equal to that of a son; but they are not entitled to specific deductions for their seniority.

Whatever, however, a wife is entitled to as her specific deduction, that too the wife gets; accordingly A'pastamba says :—“The furniture in the house and the jewels belong to the wife.”—“Furniture” means pots for eating and the like. What furniture of a woman is not joint property and what ornament is not so, will be considered hereafter.

Nor is it reasonable to say that when Vijnānesvara explains the above text (of Yogisvara) to intend that a wife is entitled to a share equal to that of a son in both the modes (of partition), then the condition consisting in the equality of shares, as ordained in the passage, “If he makes the allotments equal,”—is useless: this much only ought to have been said that the wives do not get specific deductions according to their seniority. Because a mode of mere unequal distribution without the specific deductions,—has been declared by Manu in the text,—“When the specific deductions have thus been made, let equal shares (of the residue) be allotted: but if the specific deductions be not made, then the distribution of shares among the sons shall be in this manner,—let the eldest have a double share; the next born, a share and a

half, and the younger sons each a share : this is the settled law,"—by Gautama in the text,—“Or the first-born may have a double share, and the rest one share each,”—by Vasishtha, in the text,—“The partition of heritage among brothers is now declared : let the eldest take two shares, to him also belongs a tenth of the oxen and horses ; the goats, the sheep and the house belongs to the youngest ; the iron instruments and the furniture of the house belong to the middlemost,”—and by Náraḍa, in the text,—“To the eldest an additional share should be given ; for the youngest the best share is ordained ; the rest shall partake of equal shares and so the unmarried sister.”—If this mode be adopted, then in order to establish the absence of the wives' shares in that case, the restrictive rule, namely, “If he makes the allotments equal,”—has been ordained. Hence there is no defect.

Accordingly in interpreting the following text of Manu, viz.—“Among undivided brethren, if there be exertion in common, then the father shall on no account make unequal allotments,”—which prohibits the distribution of unequal shares, if in acquiring the property there has been “in common” *i. e.*, equal “exertion” *i. e.*, labour of all the brethren,—Jimútaváhana says :—But the specific deductions may certainly be given by the father, these do not partake of the nature of allotments ; unequal allotments only being prohibited.

The following is the opinion of Vijnánayogin :—Hence also in a case of partition with specific deductions, as declared by Yájnavalkya in the text, “or the eldest with the best share,”—the sons certainly take equal shares ; consequently to that case also, the above text (of Yájnavalkya) is applicable. But it does not apply to the case of partition with double shares &c.

But if *woman's property* has been given (to a wife,) in that case the allotment of a half share is subsequently ordained in the text,—“If any have been assigned, let him allot the half.” Although this has been ordained with reference to what the husband is to give to a wife who is superseded by the marriage of another wife, still by parity of reason it is to be applied to the present case where the question occurs (as to what should be allotted to a wife who

has received *woman's property*). For Baudháyana says :—“ What is affirmed of even one among many that have a common property, the same is to be extended to all, since they are declared to be similar.”

Jímútaváhana and his follower the author of the Dáyatattva appear to explain the term “ exertion in common” in the text of Manu, viz.,—“ Among undivided brothers &c.,”—to mean, if all ask for partition ; for they say :—“ But when the sons request partition in the father's lifetime, an unequal distribution should not be made by him.” But this interpretation is improper inasmuch as the term “ in common” (*saha*) becomes unmeaning, and the term “ exertion” (*utthínam*) although importing labor must be taken to signify, desire for partition ; hence the interpretation put by us is to be preferred : thus we get also harmony with the following text of Yogísvara, viz.,—“ When there is an augmentation of the common stock, then however, the distribution is ordained to be equal” : hence that text is reasonably construed by putting no other interpretation than what is approved by us.

It has been said in the Mitákshará :—“ Again in the text,—‘ If any have been assigned, let him allot the half,’—the term ‘ half’ does not signify an exact equal division ; hence so much should be given as what was given before and what is given now may be equal (to the share of a son).” The purport of which is this :—although the term *ardha* (half), in the neuter gender, signifies equal division according to the *kosha* (vocabulary) which says,—“ *ardha* in the neuter gender, implies equal division,”—still the intention is that a wife is entitled only to a share equal to that of a son, so that the share of a wife may not be unsettled, that is, sometimes greater than that of a son, and sometimes less ; also that the restriction as to an exact half share may not have an ultra-mundane object.

With regard to this the author of the Madanaratna says :—“ From the plural number in the term ‘ wives,’ (in Yájnavalkya's text) it appears that the father himself is to take a share for each wife ; but separate shares are not to be allotted to them ; since that would be contrary to Hárita's text which ordains,—‘ There can be no partition between husband and wife.’ ”

This is not tenable ; for partition between husband and wife is not affirmed here, so that there would be conflict with the text of Hárīta, but (what is affirmed is) the gift to the wives, at the time of separating the sons, of shares equal to theirs, like the gift through affection ; for this reason it has been said that a half share shall be assigned if *woman's property* has been given. Hence there is no defect.

11. The partition, however, which takes place at the desire of the sons during the lifetime of the father,—must be equal ; because there is no provision for inequality (of distribution,) and because the term “equally” which occurs in the previous text is to be construed with the text of Manu (Náraṇa ?) viz.,—“When the mother is past child-bearing.”

So also the partition after the demise of the father must be equal ; for it is so declared by the term, “equally” in Manu's text cited before ; also Hárīta says, “When the father is dead, the division of the heritage shall be equal ;”—so Paithínasi declares,—“When the paternal property is to be divided, the shares of the brothers shall be equal”; so also Yájnavalkya ordains,—“After the demise of the parents, the sons shall equally divide the heritage and the debts.”

This text (of Yájnavalkya) has been explained in the Mítákshará, thus :—“After the demise of the parents,” indicates the period of partition, “the sons” shows the persons by whom partition is to be made, “equally” restricts the mode of partition.

If it be said that when Manu, after having premised partition after the demise of the father, and having ordained the alternative of joint abode to be preferable, in the following text,—“The eldest alone, however, may take the paternal estate in its entirety, and the rest may live under him as under a father,”—has also spoken of unequal division in the text,—“The specific deduction for the eldest is the twentieth part &c.” :—then how can the restriction, be obtained that the distribution shall be equal ? The answer is, although this unequal distribution is laid down by the Sástras, whether the father be alive or dead ; still

the restriction,—that the distribution shall be but equal in this *kaliyugam* (age of discord,)—is to be maintained in pursuance of other texts ; for Yogisvara ordains,—“ But practise not what is abhorred in the world though it be legal, for it secures not spiritual good.”

Here the term “world,” means *yugam* (age); the meaning is, “what is abhorred” i. e., prohibited to be practised in one age, although it may be legal in another age, ought not to be practised. Otherwise there would be the following defects :—it would be contradictory to say that the same thing is legal, and (at the same time) is one which secures not spiritual good ; the abhorrence of what is agreeable to the Sástras by one who is versed in them would be contradictory ; the abhorrence of mortals in ignorance of the Sástras does not, however, render anything incapable of affording spiritual good, because the same might extend to cruelty &c. in the ceremonics of *agnisoma* and the like. Accordingly, those only that are ordained to be shunned in the *kaliyugam*, such as the killing of cattle in honor of a venerable guest and the sacrifice of cows, have been set forth in the Mitákshará as examples of what are abhorred in the world.

Again wherever the re-marriage of an undefiled widow, and the like, have been mentioned under what are to be shunned in the *kaliyugam*, there have been also included the specific deductions for the eldest &c. ; thus in the A'dipurána it has been said,—“The re-marriage of a woman once married, the specific deduction for the eldest, the sacrifice of kine likewise, the intercourse with a brother's wife, and the use of a *kaman-dalu* ; these five shall not be done in the *kaliyugam*.” So also it has been said in the Smritisangraha,—“As neither the law of appointment to raise issue, nor the sacrifice of kine, so neither the partition with specific deductions, now exist.”—“The law of appointment to raise issue,” means, intercourse,—in the prescribed way, by appointment of venerable relatives,—with a brother's affianced bride if the brother dies, (before the completion of marriage); “the sacrifice of kine,” is as ordained in the text,—“Sacrifice a barren cow as a victim consecrated to Mitra and Varuna ;” “now,” means, in the *kaliyugam*.

Accordingly A'pastamba, having declared his own opinion,—“A father, in his lifetime, shall equally distribute the heritage among the sons;”—and having stated as the opinion of some, the taking of the entire estate by the eldest, in the text,—“Some (say that) the eldest is the heir;”—and having shewn, as the opinion of others, a distribution with specific deductions, in the text,—“In some countries, the gold, the kine, and the black produce of the earth belong to the eldest; the car appertains to the father; and the furniture in the house and ornaments are the wife's, as also wealth (received by her) from kinsmen;”—has refuted the same in the text,—“That is contrary to the Sástras;”—and has himself explained the inconsistency with the Sástras, in the text,—“No distinction is mentioned in the Sruti,—‘Manu distributed his heritage among his sons.’”

Hence unequal distribution, though ordained by the Sástras, ought not to be carried out in the *kali* age.

As for what has been said by the author of the Mitákshará, namely,—“it is also contrary to scripture;”—that is open to question. For if there be inconsistency with scripture, then unequal distribution could not be practised in other ages also (besides the *kali* age,) consequently the texts ordaining it would be altogether without authority; hence it is inconsistent to say that it is one which is to be shunned in the *kali* age. Neither is here direct conflict with scripture; for inasmuch as distinction is not ordained in the Sruti (cited above), therefore equality (of distribution) is inferred according to the maxim,—“Equality is the rule where no distinction is expressed.”

In the following passage of the Smritichandriká, however, there is written a different text of scripture, cited by Baudháyana, which ordains unequal distribution:—He himself has declared that there is a different text of scripture, bearing upon the specific deductions for seniority, “The eldest shall set apart one from every kind of property agreeably to the Sruti,—‘Therefore set the eldest son at ease with a property’;” by speaking of “one from every kind of property,” he indicates that the singular number in the term ‘a property,’ occurring in the Sruti, is significant; ‘set at ease,’ means satisfy.

Jímútaváhana and others, however, say that the equal or unequal distribution are determined respectively with reference to the consent or not (of the younger brothers,) in the passage :—“When there is the consent of the brothers by reason of great respect &c., (for the eldest) then there may be unequal distribution with specific deductions and the like : accordingly equal division alone is observed in the world, because persons of the present day (who are younger brothers) entertain no great respect (for their elders), also because elder brothers deserving of deducted allotments are now rare.”—This is, however, not acceptable as it is inconsistent with the first half (of Yájnavalkya’s text,) because in that case, the sons’ desire alone would be the cause ; and the interpretation,—that the father’s will constitutes another independent mode (of partition)—has, however, been previously shewn to be erroneous.

12. When the father distributes his self-acquired property amongst the sons, he shall himself take two shares. This has been declared by Nárada,—“ The father while dividing his own property shall take two shares.” Also Vrihaspati says,—“ If partition takes place in his lifetime, the father shall take two shares.”

It is said by Sankha and Likhita that the father takes two shares in case he has an only son ; thus,—“ If he be the father of an only son, he shall allot two shares to himself.” The author of the Vyávahárapárijáta, however, has explained the above text, thus ;—Here the term “only” (*eka*) means, excellent ; accordingly if the son, being accomplished, is capable of acquiring wealth, then on separation with him, two shares shall be taken by the father.

Jímútaváhana, however, has explained the above text, thus ;—“ The term *ekaputra* (rendered above into ‘the father of an only son’) signifies, the son of one father, i. e., the true (*aurasa*) son ; it is not a compound called *vahubrihi*, signifying, ‘the father of an only son’ ; for, as in a *vahubrihi* compound what is principally considered is an object different from what the constituent words of such a compound mean, it is not preferable to a *shashthitatpurusha* ; accordingly the *wife’s son* (*kshetraja*) is excluded by reason of his being the son of two fathers : hence a father being

a true son (of his own father) shall take two shares out of the estate of his own father, but not a father who is *kshetraja* or the *wife's son*."

This is wrong, for in that case this text would refer to the estate of the grandfather; but it will be established that even a father who is a true son (of his father) is entitled to (no more than) a share equal to that of a son, because the father and the sons have equal right to the estate of the grandfather: accordingly here the *vahubrihi* compound is to be necessarily preferred.

The author of the *Mitákshará*, however, has not noticed the above text at all.

Kátyáyana says,—“A father takes either a double share or a moiety by reason of his acquisition of both son and wealth; and a mother also, if the father be deceased, is entitled to a share equal to that of a son.”

(In commenting) on this text Jímutaváhána says:—“The term *putravittárjanát* (rendered above into ‘by reason of his acquisition of both son and wealth’) means, from a son’s acquisition of wealth, i. e., the father is entitled to two shares of the wealth acquired even by a son, in the same manner as of his self-acquired property: but it does not signify, ‘by reason of the acquisition of both son and wealth,’ for it is admitted that when partition is made with brothers, then even one who has not got a son takes two shares as the gainer of the wealth; hence it must be affirmed (by the adversary to be the meaning of the above text) that if any relative exist who is entitled to participate, the acquirer takes two shares &c.; but if there be none, he takes the whole. But thus the specific mention of father and son would be unmeaning, like the singing of a drunkard. Besides acquisition is an act causing right of property, for it has been declared that ‘it is a contradiction to say that acquisition does not produce right of property’; but it has been shewn under the topic of the gift of whatever a man owns that there can be no such right over sons; hence the term acquisition would be metaphorical in regard to sons and literal in respect of wealth; but this two-fold meaning of a term once uttered is unreasonable. Nor can it be argued that the text would be superfluous, since the son’s right to a double share is obtained

from the fact of his being the acquirer, and since the father's right to two shares is also deducible from other texts, independently of the above text. For this text is not superfluous; since without this text there is no authority for holding that the father is entitled to two shares of his son's wealth."

This is not tenable; for the compound (*putravittárjanát*,) as explained by you, conveys a secondary meaning, depending at it does upon the genitive case to be imported, and as such, is less reasonable than the conjunctive form (maintained by us). As for the objection raised to the conjunctive form by the argument "for it is admitted &c." ; that is extremely incongruous; for the text does not relate to participation &c. by brothers, the father's property being the subject dealt with. Nor can it be contended that the term *putra* "son" (in the above text) is useless, the acquisition of property alone being a sufficient cause for taking two shares. Because the term shews the absence of independence (in the son): the purport is, a son too being acquired by him like property is dependent, and as such can be no obstacle to the taking by the father, of two shares of his self-acquired property. As for the objection, "but this two-fold meaning &c." ; that too is not good. For the father's right over the sons too is admitted. It cannot be said that this would be contradictory to what is said under the topic of the gift of whatever a man owns, the purport of what is said there being against such right of the father and others. Because the absence of the gift of sons &c. which is concluded in that topic, has been established by reason of conflict (of the gift of sons &c.) with what is shewn in the Bháshya, to be the inducement (for giving away all that a man owns). It is for this reason that the provisions regarding the gift &c. of sons and daughters, bear only the primary meaning, they do not convey gift &c. that are secondary, such as making sons &c. dependents of others.

13. But the appropriation of two shares by a father relates to his self-acquired property; it has no reference to the property acquired by his father. For the father and the sons are entitled to equal shares of the grand-

father's estate, since their co-equal ownership therein has been ordained by Yájnavalkya in the following text,—“The ownership of father and son is, indeed, similar in the acquisitions of the grandfather, whether land, any settled income or moveables.”

And the meaning of this text is this:—“land,” signifies, rice-field and the like; “any settled income,” is what is given by reason of written grants by kings to the following effect,—“To such and such a person, so many betel-leaves or the like shall be given from such and such a plantation of betel leaves or orchard of betel-nuts;” “moveables,” are gold &c.; by the term “indeed,” it is indicated that the ownership of father and son in these is well-known, right accruing by birth alone; that again is “similar,” i. e., co-equal: hence in respect of the grandfather's estate, the sons are not dependent on the father, as they are in respect of the father's self-acquired property; consequently partition (of the grandfather's estate) may be made (by the sons) even against the father's will, and the rule regarding the father's two shares does not obtain.

So Vrihaspati has declared,—“In the property acquired by the grandfather, whether immoveable or moveable, the partnership of both father and son is ordained to be co-equal indeed.”

The author of the Madanaratna says:—The meaning is that the father shall take an equal share only, but not a double share as in the case of his self-acquired property, nor shall adopt the mode of unequal distribution.

On this, Jimútaváhana says:—“Where of two brothers, one dies, while the father is alive, leaving a son, and the other brother survives and subsequently the father dies; in that case the son alone, by reason of his proximity, would have inherited the father's estate, but not the grandson whose father is previously deceased, by reason of his distance; in order to prevent this, it has been declared that 'the ownership is similar;’ hence, as the father had ownership in the grandfather's estate, so his son too has: there is, however, no distinction by reason of greater or less propinquity, both being equally competent to offer oblations in the *párvana* mode. This is the purport. Hence also a great-grandson whose father and grandfather

are dead is equally entitled to the estate of the great-grandfather, for there is no distinction as to the offering of oblations. But if the sons had ownership in the grandfather's property while the father is alive, then on partition by two brothers having sons, their sons too would have been entitled to shares by reason of their equal ownership. Hence the text (of Yájnavalkya) relates to a grandson whose father is dead and not to grandsons generally. Nor can it be said that such cannot be the purport of the text, as being not the subject premised. Because the case of grandsons by different fathers is the subject previously proposed. But what is intended to be shewn by the declaration of the similarity of ownership, is that there cannot be unequal distribution by the father at his will, as it can be in the case of self-acquired property. Thus Vishnu says :—‘When a father separates his sons from himself, his will regulates the division of the wealth acquired by himself; but in the estate inherited from the grandfather, the ownership of father and son is co-equal.’ Hence as regards self-acquired property, a father may separate his sons with unequal allotments; but in the grandfather's estate the ownership being co-equal, the father cannot act according to his pleasure. These texts being reasonably construed by this interpretation alone, the general rule,—that the father's desire constitutes the period of partition, and that the father is entitled to a double share,—is not affected (by them). Again, although it may be conceded, as is maintained by Dhāresvara, that the texts relate even to grandsons whose father is alive, still the object is no other than to prevent unequal distribution by the choice of the father; they do not however shew that partition may take place at the desire of the sons, nor that the father is not entitled to two shares. When, agreeably to the following text of Vrihaspati, viz.—‘The eldest by birth, by science, and by good qualities shall obtain a double share of the heritage; and the rest shall share alike: for he is as a father to them,’—a father, who delivers his father from the lower regions and is the eldest by good qualities,—is, on partition with his brothers entitled to a double share as being like a father: then it is not proper on the part of yourself and the sages, to say

that the father himself, on partition with his sons does not obtain a double share of the estate inherited from the grandfather, although it is through him alone that the relation of the sons arises to the grandfather's property. Hence the rule that the father's desire constitutes the period for partition, as set forth in the text, 'He may separate his sons by his choice' and that the father is entitled to a double share, as is laid down in the text,—' shall take two shares,'—is applicable also to the property inherited from the grandfather; but it is only the unequal distribution amongst the sons, that does not take place at his will. Nor can it be said that in the following text, viz.,—' In the property acquired by the grandfather, whether immovable or moveable the parcenership of both father and son is ordained to be equal indeed,'—the equality of the shares of father and son being clearly declared by Vrihaspati, how are two shares for the father obtained in this case too? Because the meaning is that 'the parcenership,' i. e., the act of one who distributes is 'equal,' that is to say, the father is not, however, entitled to make a distribution of greater and less shares at his choice: it does not imply that the shares must be alike. Or the declaration of equal parcenership may be taken to have reference to a father who is the son of two fathers, such as the *wife's son*, since it has been shown that the term *eka-putra* in the text,—' If he be the father of an only son &c.,' —refers to one who is a true son."

This is not acceptable, being opposed to the context. Since after ordaining that among grandsons by different fathers the allotment of shares is according to the father,—it is declared,—"The ownership of father and son is, indeed, similar in the acquisitions of the grandfather whether land, any settled income, or moveables."—Now here three doubts arise, namely, whether, when the father is alive, the grandsons have no ownership in the grandfather's property, or there can be no partition, or partition can take place only by the choice of the father as in the case of his self-acquired property. Hence what the author of the *Mitákshará* says, namely, that the latter text is ordained only with a view to remove these doubts,—is consistent with the proper mode of interpretation. Where-

fore should it be restricted to the case of grandsons whose father is dead? Nor, can it agreeably to what is maintained by Dháresvara, be said, that the text is intended to prevent only unequal distribution by the choice of the father, and not the determination of the time for partition by the father's choice, nor his double share, which are without distinction applicable to this case. Because there is no ground of discrimination (as to what is the intention).—Moreover, the causality of the father's desire, is literal, being expressed by the instrumental case in the text, “may separate *by his choice*,” but the determination, by the father's desire, of the time for partition, is only inferential: it is very strange that when the literal causality is prevented by this text, it does not prevent the determination (by the father's choice) of the time for partition—which is inferential. And if the ownership be admitted to be co-equal, as you have taken upon yourself the difficulty of admitting it,—then the causality of the son's desire, and the determination by it, of the time, cannot be opposed.

If it be said,—That the father is entitled to a double share by reason of his being the father and not by reason of his greater right, nor by reason of his being the acquirer; for (otherwise) that (*i. e.*, the acquirer's double share) being established by the general text of Vasishtha, namely,—“Whatever any one of them has himself acquired, he is certainly entitled to two shares” (of the same,)—the particular text,—viz.—“The father.....shall himself take two shares,”—would be useless; therefore in the same way as, by virtue of special texts, he is, by reason of his being the eldest son, entitled to two shares of the property acquired by his father, so likewise is the father, of the property inherited from the grandfather: hence in our opinion the father is entitled to a double share even of the property acquired by a son.

(The answer is,) true, but the text which ordains co-equality of right, and which is applicable without restriction, is against that (conclusion).

That the father is not entitled to a double share of the property acquired by a son, has been already established by impugning the meaning assigned by you, to the text

cited by you, namely, *putravittárjanát*. Nor can it be said, that even if a double share cannot be deduced from that text, still the father's double share in the property acquired by a son, follows from the general text itself. For (in that case), the specification of the acquisition of the property as the reason thereof,—would become meaningless. Nor can it be argued that that part of the text which specifies the reason, is merely illustrative, otherwise there would be no use of this special text inasmuch as a double share by reason of acquisition is established by the very text of Vasishtha. Since, as the double share of the son, by reason of his being the acquirer, is not prohibited in that text, therefore although the father be entitled to two shares by reason of his being the father, still the result would be the equality of shares; but the father's share does not become greater than the son's share, as you contend, for there is no express text to that effect.

As for the impropriety mentioned in the passage, “Moreover &c.”; that is nothing. For there can be no question of propriety as to the equality ordained by a text of law: neither can impropriety be avoided by you, (for you say) the eldest is entitled to two shares by reason of his being the eldest, and the father is so entitled by reason of his being the father, hence follows the equality (of the father) with the eldest son.

14. It appears, however, from the following text of Kátyáyana, cited in the Madanaratna, that the participation of equal shares by all the brothers, and by the father and sons, is the preferable mode:—“When the parents and the brothers take in equal shares, all sorts of properties, such a partition is declared to be lawful.”—Accordingly, Yogisvara has employed the term “all” in the text, “or all may be equal sharers,” otherwise he would have said “or shall make the sons equal sharers.”

15. But with reference to a co-parcener who is capable of maintaining himself by his own exertion and does not wish to take a share of the paternal property &c., it is said by Manu:—“If any one of the brethren having a competence by his own exertion, feels no desire for the heri-

tage, he may be debarred from his share by giving him something in lieu of maintenance." So Yájnavalkya says :—"The separation of one who is able to support himself and is not desirous (of taking his share) is to be effected by giving him something."—"May be debarred," signifies, may be made to have no concern (with the property); the same is the meaning of the term "separation" (in Yájnavalkya's text); "by giving him something," means, by giving him anything, even a trifle, as a sign of partition : and this is to be done for the purpose of preventing his sons from claiming the inheritance.

Haláyudha, however, has in order to make the above text of Manu correspond with the following text of Nárada, viz.,—"He who being employed in the management of the affairs of the family, performs its business, is to be honored by the brethren with food, raiment and conveyance,"—assumed the reading *sa nirvátyas* and has explained the meaning to be,—his share is to be made up by the brethren who have taken their shares, by deducting wealth from the share of each. But this is to be rejected; because the term "feels no desire" would become meaningless, and because it is improper to assume a reading which is not noticed by the commentators such as Medhátithi; and because the other reading is consistent with the clear declaration (in Yájnavalkya's text) of "separation."

The author of the Prakásá, however, has, even adopting the correct reading (*nirvásyas*), explained the text of Manu in the following way :—"If any one of the co-sharers who are engaged in the acquisition of wealth, do not through negligence or laziness, 'feel desire' i. e., co-operate, i. e., render any assistance, although 'having competence,' i. e., capable of rendering assistance 'by his own exertion,' i. e., by his co-operation, he should be debarred from his share, i. e., from the wealth acquired by the others' own exertion, 'by giving him something in lieu of maintenance,' i. e., by allowing him to participate in the capital alone." This is not reasonable; because the term "although" (*api*) is to be imported, and because the meaning which is consistent with the text of Yogísvara, does most clearly appear, and because the interpretation put by you depends upon a different text.

16. Kátyáyana says:—"When one himself dies unseparated, his son who has not received maintenance from the grandfather, shall be made participator of the heritage; he is to get, however, the paternal share from the uncle or uncle's son: the very same share shall equitably belong to all the brothers: or his son also shall get: afterwards cessation (of succession) takes place."

"One himself," signifies, a brother,—"his son," the brother's son; "maintenance," means share; the question occurring,—'what short of share is he to get?' it is said, "the paternal share;" "his son," intends the great-grandson of the person whose estate is divided, because the case of a grandson is considered; "afterwards," i. e., after his son, "cessation" i. e., cessation of succession takes place; the meaning is that the great-grandson's son is not entitled to any share.

Accordingly also Devala says:—"Partition of heritage among undivided parceners and second partition among divided parceners dwelling together, extends to the fourth in descent: this is the settled law."—The meaning is that partition of heritage extends to the fourth degree counting from the proprietor. This rule is alike applicable if divided coparceners dwell together after re-union, by reason of the expression "dwelling together."

The term "the paternal share" being used by Kátyáyana, it is indicated that the allotment of shares is to be according to the fathers. Accordingly Yájnavalkya says:—"Among grandsons by different fathers the allotment of shares is according to the fathers."—The meaning is this:—The right by birth of grandsons to the estate of the grandfather is not distinguishable from that of the sons; hence although it is proper that the grandsons who are alike to the sons, should have a share equal to that of a son;—still their share being adjusted through their father, they are entitled to the shares of their fathers respectively; the participation, however in the grandfather's property is not with reference to themselves. What is intended is this:—If unseparated brothers die leaving sons, and the number of sons be unequal, one leaving two sons, and others three, four &c., the two shall take the share of their father by dividing

it into two ; the three, four &c. also shall take the share of their fathers by dividing the same into three, four &c. respectively : but the distribution of the grandfather's estate is not to be made according to the number of grandsons. In the same way when some of the brothers are alive, and the others die leaving sons, then the surviving brothers shall take their own shares, and the sons of the others shall take the shares of their fathers respectively : this distinction is based upon the authority of the texts. Hence this text indicating as it does, the case of similar co-heirs (*i. e.*, the case of grandsons only) is superfluous. Unequal distribution with specific deductions also is based upon the authority of texts. But equal participation which follows from the co-equality of ownership has been superfluously laid down by the texts.

17. Whatever property of the grandfather was lost by theft or the like, but has been recovered by the father, therein the grandsons participate, only by the choice of the father, in the same way as in the property acquired by the father. This has been declared by Manu,—“But if a father recovers his paternal property, which was not recovered before, he shall not, if unwilling, share that property with his sons, (like what is) acquired by himself.”

The term “acquired by himself” is to be construed by supplying the term “like what is”; or it may be construed in this way,—because that property passed from the grandfather, and was recovered by him alone, hence it became as it were his self-acquired property; the term “if unwilling” shows that it is by the choice of the father alone and not by the choice of the sons, that partition takes place of such property although inherited from the grandfather.

Likewise there is another passage of law :—“Whatever property of the grandfather was taken away, but has been recovered by the father by his own exertion, and whatever has been acquired by means of science heroism, &c., therein the father's ownership is ordained; he may at his pleasure, make a gift of it or allow partition to be made of such property; but in his absence, the sons are pronounced to be equal sharers.”

" Taken away," i. e., wrongfully taken possession of by strangers ; the meaning is, that it was not recovered by the grandfather but was recovered by the father : the meaning of the expression " by his own exertion," is, without the use of the grandfather's property ; but if it be recovered by means of the grandfather's property, then the father obtains two shares on account of his being the acquirer by reason of the text of Vrihaspati, namely,— " Among these, he who acquires himself, shall get only two shares." And this is to be construed also with what is acquired by means of science &c. ; but this will be (hereafter) stated at length.

The substance of what is intended in the above text is this :—Although the ownership of the sons and the grandsons in the property of the father and the grandfather arises by birth alone, still by reason of the texts previously cited, the sons being dependent on the father, with respect to the father's self-acquired property, and the father being entitled to superiority on account of his being the acquirer, the sons must give their assent to the disposal by the father of his self-acquired property excepting land and slaves, by reason of the previously cited text, namely,— " Immoveables and bipeds &c." With respect to the grandfather's property, however, there is also the power of forbidding (any disposal by the father); but with respect to property which was not recovered by the grandfather but has been recovered by the father, the sons are certainly dependent on the father's will, although the property be the grandfather's ; but as regards gems, pearls &c., though inherited from the grandfather, the father alone has independence by reason of the previously cited texts, namely,— " The father is master of all the gems, pearls, and corals &c."

18. Jimútaváhana says :— " When partition is made by the brothers after the demise of the father, then as regards the paternal estate too, it should take place after the demise of both the parents, since the demise of the father as well as of the mother is mentioned (in the text of Manu). The opinion of the author of the Sangraha, that the demise of the mother refers to the maternal

property is not, however, to be preferred; because there is no authority to support the supposition that the term 'paternal' is the result of the uni-residual conjunctive compound, signifying, belonging to the *parents*. And because, if this be taken to be a provision regarding partition of the mother's estate, then there would be tautology, since partition of the mother's estate has been subsequently declared (by Manu) in the text,—' But when the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate.'—Yájnavalkya also has, in the following text, namely,—' Let sons divide equally the effects and the debts, after the death, of both parents: but daughters share the residue of their mother's property after payment of her debts; and the (male) issue, in default of daughters;—declared the partition of the mother's estate in the passage, 'but daughters &c.' And the construction intended (of the first part of this text) is not that 'Let sons divide the effects of both parents,'—but that 'after the demise of both parents': it is, however, by implication that the relation, namely,—'the effects and debts of the father,'—is obtained, because in the latter part the partition of the mother's effects and debts has been mentioned. Accordingly in the previously cited text of Sankha and Likhita, namely,—' Since the support of the family depends on the wealth, the sons are not independent when the father is alive, as also while the mother is so,'—the meaning expressed by the portion 'as also while the mother is so,'—is, that the uterine brothers are not independent of the mother, and are not entitled to effect partition even while she is alive. Hence also in the text of Vyása, namely,—' For brothers, a common abode is ordained so long as both the parents are alive: if separated after their demise, the religious merit of them increases,'—separation being prohibited by the injunction regarding the common abode, and partition being prohibited in the lifetime of the father and the mother, the association of their lives is not intended by the passage, 'while the parents are alive': hence if any one of the parents be living, partition is not lawful; but it is so, when both are gone to rest.

"Also in the text of Vrihaspati, namely,—'On the demise of the parents, partition among brothers is allowed, and even while they are both living, it is right if the mother be past child-bearing,'—since partition during the lifetime of the mother who is past child-bearing, cannot be relative to the mother's property, and since the very partition which is mentioned to take place after the demise of both parents, and which is referred to by the particle 'even' in the passage 'even while they are both living'—is pronounced to be right; therefore it is ascertained that the partition among brothers after the death of the parents is relative to the father's estate alone.

"Accordingly Vyāsa propounds that if partition takes place in the lifetime of the mothers, it is to be made according to the mothers:—'If there be sons of one man, by different mothers, but equal in number and alike by class, a distribution among the mothers is approved.'—Likewise Vrihaspati ordains,—'If there be many sprung from one, alike in number and class, but born of rival mothers, then according to law, partition should be made by them, by distribution amongst the mothers.'—Since there is not in reality any difference in the shares of (the different sets of) the half brothers, for they are equal in number and in class, hence the provision of allotment of shares to the mothers refers to the superiority of the mothers. And the purport is, that this is not a partition among the sons, but the partition is to be made avowing it to be one among the mothers. Therefore as in the mother's property, so in this case also, the separation of the sons from each other is not lawful in the lifetime of the mother. Hence what is said by Gautama and other sages, namely,—'In partition there is increase of religious merit,'—must be understood to refer to one after the demise of the mother."

This has already been refuted on the ground that some spiritual object will have to be assumed, if it be held that the mother's death has reference to paternal property.

As for what has been said, namely,—that the term "paternal" has no reference to the mother's property, because there is no authority for considering it to be the result of the uni-residual conjunctive compound, and because there would be tautology;—that again is unreasonable.

Because for fear of the objection of assuming some spiritual object it cannot but be admitted that the term is the result of the uni-residual conjunctive compound ; the objection of tautology, however, is not consistent with reason, for the injunction regarding the partition of maternal property may rightly be taken to be a repetition with a view to lay down particular rules.

As for the text of Yájnavalkya, the author of the Mítákshará construes it thus, "Let the sons divide the effects of the father and the mother;" he has removed the objection of tautology by introducing the latter half thus, "The sage states an exception in regard to the mother's separate property"; and he has,—after explaining the text, "and the issue succeeds on their default," thus, "In default of daughters, the issue, *i. e.*, the son and the like, shall take the mother's wealth after payment of debts,"—said,—“Although this is established by the first part of the text, namely,—‘Let the sons divide equally the effects and the debts, after the demise, of the parents,’—still it is again declared for the sake of greater perspicuity.”

Nor can it be argued that let this only be the construction here, namely, “after the demise of the parents;” the terms “the effects and the debts” become by implication connected with “father's”, since in the latter half, the partition of the mother's estate is ordained ; and thus the portion,—“the issue succeeds on their default”—does not become an useless repetition. Because, the terms “the effects and the debts” implying as they do, relation to some person, the question occurs who is that person. consequently the construction of these terms with the term “of the parents” which occurs in the same sentence—is preferable to the construction of these terms with the term “of the father”, which is to be known by implication after the perusal of the whole verse; and it is proper even to admit, as a consequence of such a construction, that the portion, “the issue succeeds on their default,”—is a mere repetition. According to the opinion of those, however, who explain the term “issue” to mean, the issue of the daughter, *i. e.*, the daughter's son,—there can be no fear whatever of that portion being a useless repetition. All this will be dwelt upon at length when the partition of *woman's property* will be discussed.

The absence of independence in the lifetime of the mother, as ordained by Sankha and Likhita, may certainly be reconciled by supposing it to be intended to extol the veneration due to the mother, or to refer to her property.

Also the text of Vyāsa, namely,—“For brothers &c.,” —merely lays down that during the joint lives of both the parents, the common abode is approved; neither is there any defect in considering that the association of their lives is intended by the phrase, “while both the parents are alive.” But, in fact, the joint abode is preferable also after the demise of the parents by reason of the text “The eldest alone shall take the entire property &c.,” and partition is calculated to increase religious merit, and religious duties such as the five great sacrifices must be performed even while the mother is alive, hence for the purpose of increasing it, partition is certainly proper.

As to what has been said, namely, “Also in the text of Vrihaspati,—‘On the demise of parents’ &c., since partition during the lifetime of the mother who is past child-bearing &c.,”—the answer is: By the first half (of the text) it is declared that the common abode is preferable while both parents are alive, and that partition takes place after their demise; therefore the meaning (of the latter half) is, that inasmuch as there is a possibility of the birth of other sons if the mother be not past child-bearing, and the dissipation of the means of their support is censured by the text,—“Those that are born and those that are not yet begotten &c.,”—but that it is not possible if the mother be past child-bearing, therefore partition is approved just as when the father’s affections become extinct: that being so, the mother being past child-bearing, there is no possibility of the birth of daughters who are entitled to her wealth (in preference to sons), therefore the sons may, by her choice, divide her wealth also; hence this text may relate also to maternal property. Therefore the objection is nothing.

As for what has been said in the texts of Vyāsa and Vrihaspati, namely, that partition by half brothers is to be made by a distribution amongst the mothers;—that is not against my opinion. Since, just as by virtue of the texts, like—“A person with his family shall not be independent

while the parents are alive,"—the dependence on the father and mother continues even after partition, so likewise by virtue of the above texts, (the half brothers) shall, as long as the mothers are alive, remain obedient to their orders, thinking the partition to be as between the mothers only. How from this can it follow, that there is no right to the partition of the paternal property while the mother is alive ? There is no use in enlarging upon the subject.

19. As in the case of partition during the lifetime of the father, the father is to make his wives equal sharers with his sons, so also in the case of partition after his demise the sons are to make them partakers of shares equal to those of themselves : this has been ordained by Yájnavalkya,—“The mother also, of those effecting partition after the demise of the father, shall get an equal share.”—If *stridhanam* has not been given (to her): when it has been given, then it is ordained that a half share shall be allotted. Notwithstanding, the term “half” here does not signify a moiety (or equal division); but what is intended is, that so much shall be given which (together with her *stridhanam*) will make her an equal sharer with a son.

The term “mother” which signifies the parent does not include a step-mother also; for the term mother which has been once used (in the text) cannot reasonably convey two meanings one of which is primary and the other secondary.

From the following text of Vyása, namely,—“The father’s sonless wives, however, shall be made equal sharers ; as also the paternal grandmothers, for they are declared to be equal to mothers ;”—and from the use of the term “wives” in the text of Yágisvara (§ 10), it follows that, in partition during the lifetime of the father, all his wives without distinction are entitled to equal shares with the sons ; for the terms “son” and “wife” convey meanings in correlation with “father,” hence there can be no objection of their bearing primary and secondary meanings. But in partition after the demise of the father, it is effected by the sons, and the term mother which appears to be used in correlation to them, cannot, by reason of the variableness in its meaning, imply a step-mothor also ; therefore those

only who are mothers of sons, are entitled to shares equally with their own sons. But those who are sonless are entitled to food and raiment only, like the wives of coparceners who are undivided or re-united. And this is reasonable, since the father is independent in partition during his lifetime, and the sons are independent in partition after his demise; and since this appears to be the intention of the use of the term "mother" and the term "wife." It is also reasonable that those who are destitute of sons are entitled only to maintenance. This appears to be the intention of various commentaries.

That all the wives of the father, whether sonless or having sons, are entitled to shares equally with the sons, even in partition after the father's demise—appears to be the opinion of the learned author of the *Mitákshará*; since he introduces the text of Yájnavalkya, namely "The mothers also of those effecting partition after the demise &c.,"—with these remarks:—"It has been ordained that the wives are entitled to shares equally with the sons in partition during the lifetime of the father, now the sage declares that the wives are entitled to shares equally with the sons in partition after the demise of the father."

Accordingly also the author of the *Madanaratna* says:—"The use of the term mother indicates also the sonless step-mothers, as also the paternal grandmothers, agreeably to the text of Vyása,—'The father's sonless wives &c.'"

The following seems to be the intention of the authors of the *Mitákshará* and the *Madanaratna*:—And this is consistent with reason, since otherwise, in the phrase "father's wives," (in Vyása's text) the use of the term father, the correlative of son,—would be useless. Had the participation of equal shares with the sons, referred to the partition in the lifetime of the father, then the term "mothers" would have been used instead of "the father's wives." Hence it follows that it is only in consequence of their being the wives of the father, that they get equal shares with the sons, whether the partition takes place in the lifetime of the father or after his demise.

But if the genitive case in the term "father's" (in Vyása's text) be held to be used to denote the agent, then what is affirmed (in the text of Vyása) amounts to

this,—“The wives are equal sharers in partition made *by the father*,” and it follows by implication that the term “wives” stands in correlation with him ; hence it is proper to say that this text relates only to partition in the lifetime of the father. But in Yájnavalkya’s text the term mother cannot properly refer to the parent as well as to the step-mother ; and for its correlative the term sons occurs suggested by the term mother itself ; therefore in order that the term mother may have its primary meaning it is proper that it should imply the parent alone. This is also the practice of the learned. This is here reasonable ; this ought to be accepted : there is no use in dilating upon the matter.

Vrihaspati ordains:—“After his death, however, the mother (*janani*) or the daughter gets an equal share.” Here by the context the term “his” means, the father’s.

20. If at the time when the father is dead, any of the brothers be uninitiated, then after having performed their initiation at the charge of whole estate, the residue shall be divided according to shares. Thus Yájnavalkya says:—“The uninitiated ought to be initiated by the brothers who have been previously initiated.”—From the mention of the term “*by the brothers*,” it appears that “the uninitiated” brothers are intended. The mere provision that they ought to be initiated, having no concern with the subject of the Partition of Heritage, what is intended is,—at the charge of the whole estate. Accordingly Vyása says:—“Those, however, among them, that are uninitiated shall be initiated by the elder brothers, out of the patrimony ; so also the maiden daughters according to law.”

Nárada declares the necessity of the initiation of the uninitiated, although no wealth of the father exists, thus :—“If no wealth of the father exists, the initiation must, without fail, be made by brothers already initiated contributing funds out of their own shares.”

21. The marriage of unmarried sisters also is necessary. If there be paternal property, then shares also are to be allotted to them. This is ordained by Yájnavalkya, —“The sisters also, giving (them) a fourth part from one’s own share.” The passage “uninitiated ought to be

initiated" (occurring in the previous text § 20) is to be construed with this text. Manu says:—" To the maiden daughters, however, let the brothers give separately from their own shares ; (they) shall be degraded, if unwilling to give a fourth part from every one's share."

In the Ratnákara and the Chintámani it has been explained that, here the meaning of both the texts (of Manu and Yájnávalkya) is not that to each of the sisters is to be given by all the brothers a fourth part of every one's own allotted share ; for in that case she who has many brothers would get much wealth, and a brother who has many sisters would be deprived of everything ; therefore what is intended, is only the allotment of so much property as is sufficient for marriage. And in support of their view the following text of Vishṇu is set forth :—" The marriage of the maiden daughters, however, shall be effected according to the estate."

This is not reasonable. Since it cannot properly be said that in neither of the texts the allotment of shares is intended ; and since the sin for refusal to allot shares has been mentioned as distinguished from the sin for non-performance of marriage ; otherwise, also the declaration of sin for refusal to give (shares) in the text,—“ shall be degraded if unwilling to give,”—would have to be interpreted to intend sin for non-performance of marriage.

For this reason Medhátithi and the author of the Mitákshará and others have explained the texts thus :—The ablative case in the terms “ from one's own share” (*nijádansit*) and “ from every one's share” (*svát svádansat*) is, however used in the stead of a participle understood ; that being so, the meaning is *having-regard-to* that (i. e. “ one's own share” and “ every one's share.”) Hence, to a maiden daughter shall be allotted a fourth part of such a share as is assignable to a son of the same class with her. Accordingly the following meaning is deduced : if the maiden be daughter of a Bráhmaṇí, her share is the quarter part of what will be stated hereafter to be the allotment for a son by a Bráhmaṇí wife ; similarly also if the maiden be daughter of a Kshatriyá or the like. For instance if a Bráhmaṇí is the only wife of any person, and she has one son and one daughter ; then dividing the whole paternal

property into two parts, and subdividing one such part into four shares, he shall give one such share to the sister, and himself take the residue. Similarly if there be two sons and one maiden daughter, then dividing the entire property into three parts, and sub-dividing one such part into four shares, one such share shall be given to the sister, and the remainder shall be divided by the two brothers, according to shares. But if there be one son and two maiden daughters, then dividing the property into three parts and subdividing one such part into four shares, and allotting two shares to the two maiden daughters, the rest shall be taken by him. Similarly when the brothers and sisters are of the same class, whether their number is equal (or unequal), it is to be understood that in all cases the sisters are entitled to get a quarter of the share assignable to a brother of the same class. But if there be one son by a Bráhmaṇí wife and one daughter by a Kshatriyá wife, then dividing the paternal property into seven parts and subdividing the three parts which would be the allotment for a son by a Kshatriyá wife into four shares, and giving one such share to the daughter of the Kshatriyá wife, the son of the Bráhmaṇí wife shall take the residue. But when there are two sons by the Bráhmaṇí wife and one daughter by the Kshatriyá wife, then the paternal estate is to be divided into eleven parts; and the three parts which would be assignable to a son by a Kshatriyá wife, must be subdivided into four shares; and giving one such share to the daughter of the Kshatriyá, the two sons of the Bráhmaṇí shall take the whole of the rest dividing the same. It must be similarly understood in any case of equal or unequal number of brothers and sisters dissimilar in caste.

Also Vishṇu says:—"Mothers are entitled to shares according to the shares of the sons; also the maiden daughters, according to the shares of the sons: as the sons are entitled to four shares, or three, or two, or one, according to the classes, so are the wives of the same class." Here by the passage "the maiden daughters are entitled to shares according to the shares of the sons,"—although it appears that the daughters are entitled to all the shares, namely four, &c. (equally with the sons of the same class;) still because Manu and Yogisvara have declared the allotment

(to them) of a fourth part of a share in the passages “from one's own share,” and “from every one's share,” therefore the accordance with the shares of the sons is to be understood in that way only ; but they are not entitled to shares equal to those of the brothers of the same class. Thus there is no conflict.

Vrihaspati distinctly says :—“The mothers, however, are equal sharers with them, and the maiden daughters are entitled to a quarter share.” This is approved also by Kátyáyana, for he says :—“For unmarried daughters, a fourth share is intended, and for the sons, three shares: but equality is ordained if the property be small.” The meaning, however, of the passage “but equality &c.” is this :—if there be not paternal property even sufficient for marriage, then the daughters are entitled to shares equally with the sons.

Also the text of Vishṇu, namely, “The marriage of the maiden daughters, &c.,” (para. 2)—is not opposed to the explanation given by Medhátithi and others. The marriage of the unmarried daughters of the father, i. e. of their own sisters shall be performed according to wealth. By this, only the necessity of marriage is ordained, but not the giving or not giving of shares.

The author of the Smritichandriká, however, has, in accordance with the following text of Devala, namely,—“And to the maiden daughters shall be given the father's wealth, (and) nuptial property”—held that property sufficient for marriage is to be allotted; his intention is that the qualifying term “nuptial” in the passage “nuptial property” would otherwise become meaningless.

What we say here is this. The passage “To the maiden daughters, shall be given paternal wealth,” constitutes a distinct injunction; and that consists only of a fourth part, according to Manu and others. And the portion “nuptial property,” forms a different injunction, being in accordance with the following text of Sankha ;—“When the heritage is divided, a maiden daughter gets the ornaments and nuptial *stridhanam*.” And this text of Sankha has been explained by the venerable Vidyáranya in his commentary on the Institutes of Parásara, thus :—“At the time of partition of the paternal estate, a maiden

daughter gets also the ornaments put on by her, as is declared by Sankha."<sup>2</sup> But if the meaning (of the text of Devala) were that "the father's wealth" which is "nuptial" *i. e.* so much as is sufficient for marriage, shall be given to the maiden daughters; then the term "property" would be superfluous. Therefore it is reasonable to suppose that here are two distinct injunctions.

This text (of Devala,) however, is read by the author of the Dāyatattva, thus,— "To the maiden daughters shall be given nuptial property from the father's wealth." It is to be observed that in this reading too, the explanation given by us deserves to be preferred, so that this text may have the same meaning with the text of Sankha; it does not however intend that property sufficient for marriage is to be given.

Now although, sometimes the term "sister" and sometimes the term "maiden daughter &c." are used in the texts of Manu and others, still it is to be held that the subject being the partition by brothers, they convey the same meaning by interpreting the term "sister" to be used in correlation with the brothers, and the term "daughter," in correlation with their father.

Hence in partition after the demise of the father, the (maiden) sisters are entitled to get shares out of the paternal property; and not that they are only to be disposed of in marriage. But if (partition takes place) previously (to the father's decease) they get only whatever the father gives, for there is no particular text regarding the point.

But Jīmūtavāhana says:—Since Manu and Yājnavalkya have respectively declared "let the brothers *give*" and "*giving* a fourth part," therefore the sisters are not to take the fourth part, under the impression that they have a right thereto: certainly it is never said that let one brother *give* from his own share to another brother, what the latter has a right to get; similarly (is to be understood) also the giving of a fourth part. The brothers incur moral guilt, if they refuse to give; but the sister has no right to compel them.

This is not reasonable. For this conclusion does not follow from what is merely a variety of expression, just as in the texts,— "He may separate the sons by his choice" and "giving deductions to the eldest" and the like.

As for what he has said again, namely,—“ Since in the text of Náraḍa,—‘ Of those whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brothers out of the patrimony,’—the pronoun ‘whose’ (*yeshám*) is used in the masculine gender; and since immediately after this text, is commenced the following text,—‘ If no wealth of the father exists &c.,’ therefore the text refers only to the initiation of a brother. Hence, when there is paternal property then since the necessity of the sister’s marriage appears from the texts of Manu and other sages, therefore the intention is that only so much property as is sufficient for marriage shall be given.”

That is to be rejected ; for the necessity of the sister’s marriage appears from other texts. Thus in the text,—“ The father, the paternal grandfather, a brother, a kinsman (*sakulya*) the mother likewise ; on failure of the first among these the next in order who is of sane mind is the giver of a girl in marriage ; and omitting to dispose of the girl in marriage becomes guilty of causing miscarriage in every course”—Yogísvara declares that a brother too failing to perform the ceremony of a sister’s marriage becomes guilty of causing miscarriage. Hence because the text of Náraḍa is also based upon the same foundation with Yogísvara’s text, it is proper to admit that the terms “whose” (*yeshnum*) and “of those” (*teshám*) are in the genitive case in the neuter gender, by reason of the rule that neuter gender is to be used when both the sexes are intended and by reason of the rule that a term is to be taken in its widest acceptance ; or that the terms are the results of the uni-residual conjunctive compound of dissimilar terms.

The author of the Madanaratna reads a text of Vrihaspati, thus,—“ The younger brothers, however, who may be uninitiated, shall be initiated by the elder ones out of the common paternal property”—intending that the term *yabiyásas* “ younger” (in later Sanskrit *yabiyánsas*) is used in the Vedic form ; and explains it thus,—the term “ brothers” is illustrative, it includes the sisters also.

Here again it is to be understood that the maiden daughters are intended by reason of association with

initiation, and because the adjective “unmarried” is mentioned in the text (of Kātyāyana),—“For unmarried daughters &c.”: hence the maiden sisters, alone get a quarter share, the others get some trifle out of property. This will be explained in detail while treating of the mother’s property.

22. Of immoveable property, whether ancestral or self-acquired, the father may make gift and the like only with the consent of the sons, by reason of the text previously cited, viz.,—“Immoveables and bipeds although acquired by a man himself, shall not be gifted away or sold without the consent of all the sons.” By the passage “although acquired by a man himself” it is *a fortiori* shewn that the consent of the sons is indispensable in (the disposal of) ancestral property. But in case of distress of the whole family, any member is competent, even without the consent of the rest, to make a sale, gift or the like (disposal) of immoveable property, since the support of the family is indispensably necessary, by reason of the following text,—“Even a single coparcener may make a gift, mortgage or sale of immoveable property at a time of danger, for a family purpose and especially for religious purposes.”—By “religious purposes” are intended, indispensable religious ceremonies such as the *srāddha* of the father.

But a passage of law runs as follows:—“Separated or unseparated kinsmen are equal in respect of immoveable property; for in both cases one member is incompetent to make a gift, mortgage or sale;”—which is to be interpreted in this way. Although the incompetency without the consent of the others, is settled by reason of the co-equality of ownership, in joint property, of undivided coparceners, still the same is here particularly mentioned in respect of immoveable property for the purpose of extolling its worth. But as regards the separated coparceners, what is said in this text is for the purpose of facility of proof in case of dispute; for if, at a future time, the question arises whether the family is separated or undivided, then in that case, the fact of partition must be made out by the evidence of witnesses or the like; because

otherwise the gift or the like of joint property would be invalid. But if there be consent of the other co-sharers, the transaction is valid, independently of partition. Nor can it be said that let the ownership of even the separated coparceners be, as is ordained by this text, common in immoveable property. For then it would follow that partition (of immoveable property) takes place for some *ultra-mundane* purpose. Hence the validity of the gift or the like, as regards its essence, may be established even in the absence of the consent of the other co-sharers; and the determination of the dispute can take place on proof of partition. (The consent of the separated co-sharers is) like the consent of the village-men and the consent of the headman of the village, as in the text,—“Land passes by six formalities: by the consent of (the owner) himself, of the village-men, of kinsmen, of the headman of the village, and of heirs, and by gift of gold and water.” But the consent of the headman is also for the purpose of preventing boundary dispute. The consent of the kinsmen and the heirs, however, is to be explained in the very same way as is previously mentioned; accordingly there is another passage of law, viz.—“Acceptance shall be public especially of immoveable property.” Otherwise, gift or other alienation would be invalid for want of the consent of also the village-men and the headman of the village. The passage, “by gift of gold and water,” shows that since the sale of immoveable property is prohibited by the text,—“There can be no sale of immoveable property; mortgage may be made with the consent,”—and since gift is praised in the text,—“He who accepts land and he who gives it, they both are performers of a virtuous act and will certainly go to heaven”;—therefore when a sale is indispensable for the maintenance of the family and the like (necessity), the sale of immoveable property shall be made with the formalities of gift by giving gold and water to the purchasers, so that there may be even one element of gift.

But Jímútaváhana, after citing the two texts of Vyása namely,—“One parcener, shall not, without the consent of the others, make a gift or sale of the whole immoveable property common to the family; separated or unseparated

kinsmen are equal in respect of immoveable property; for in both cases a single member is incompetent to make a gift, mortgage or sale,"—says:—"These are not for establishing that one coparcener has no power to make a sale, gift or other transfer. Since as the proprietary right which is defined to consist in the power of disposal according to pleasure, exists without distinction in immoveable as in any other property, these texts cannot show the incompleteness of the relinquishment of right; for a fact cannot be altered by a hundred texts. But the prohibition is levelled against wicked persons, and is intended to show that an alienation is sinful if it is made to the injury of the family when there is no necessity for alienation such as distress of the family. Accordingly Náráda authorizes generally a sale or any other alienation:—'When there are many persons sprung from one man who have duties apart and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they may do all that they please, for they are masters of their own wealth.' Since this text specifies the reason in the passage 'for they are masters of their own wealth,' it relates to immoveables also, for else it would be unmeaning."

This is all right, but that it is not reasonable to say that it is intended to show that an alienation is sinful. Since the sale of immoveable property even by all the co-sharers being prohibited in the absence of necessity, an objection would arise that the use of the term "a single member" is unmeaning; and since it is unreasonable to assume an ultra-mundane object in a rule of positive law, when there may be a visible object such as facility of proof in case of dispute: otherwise, even in case of the consent of co-sharers, the objection of injuring the family may arise; hence the texts would have to be interpreted as referring solely to sin in consequence of injuring the family, as is laid down in other texts.

23. Here again, partition at the desire of the sons, whether in the lifetime of the father or after his demise, may take place by the choice of a single co-parcener, since there is no distinction. Hence what, after premising par-

tition, is said by Kátyáyana, in the text,—“The wealth of those who have not attained to maturity and likewise of those who are absent in a distant place, shall be deposited, free from disbursement, with relatives and friends,”—is also in support of this view. Otherwise if partition could not take place without their consent, the declaration of the deposit of their wealth with relatives and friends would be unreasonable. So also Vishnu says:—“Likewise the wealth of a minor shall be preserved till he attains to majority.”

23a. This distribution among sons extends equally to them and to grandsons and great-grandsons in the male line. There is not here an order of succession following the order of proximity according to birth. For the three descendants, namely, the son, the grandson and the great-grandson are competent to offer oblations in the *parva* occasions. Hence it is that Devala says:—“A father, a grandfather and likewise a great-grandfather assiduously cherish a new-born son, as birds the holy fig-tree, (reflecting) he will present to us a funeral repast with honey, meat and herbs, with milk, and with sweet rice and milk in the season of rains and under the asterism Maghás.” Likewise Sankha, Likhita and Gautama says:—“A father, a grandfather and likewise a great-grandfather welcome a new-born son as birds the holy fig-tree, (reflecting) he will give us satisfaction with honey and meat and especially the flesh of the rhinoceros and with milk, and with sweet rice and milk in the season of rains and under the asterism Maghás.” Thus the competency being equal and the right by birth also being equal, equal participation would have followed but is prevented by the text,—“Among grandsons by different fathers the allotment of shares is according to the fathers.”

Jímútaváhana says:—“The grandsons and the great-grandsons whose fathers are alive cannot confer oblations in the *parva* occasions, they are not therefore entitled to the estate of their grandfather and great-grandfather respectively. If there be one son, and sons of another son (who is dead,) then one share appertains to the surviving son, and the other share goes to all the grandsons; for

their interest in the grandfather's wealth is founded on their relation by birth to their own father, consequently they have a right to just so much as should have been their father's share."

This, however, is not acceptable ; because, it has been established that in the grandfather's property the grandsons also acquire ownership by birth ; hence the equality of the grandsons' share (with a son's share) in the grandfather's property is based upon the authority of the texts, and not founded upon any equitable principle.

As for what he has further said, namely,—“Where one brother has left a large number of sons, and another a lesser number, there the text,—‘ Among grandsons by different fathers &c.’—is intended to prevent equal distribution amongst all of them by reason of their being grandsons ; but if the grandsons had ownership in the estate of the grandfather while the father is living, then in the case of partition by two brothers, one of whom has sons and the other has none, the sons also of that brother would have been entitled to share by reason of the co-equality of right.”

That has already been refuted before. By this again is removed also the above-mentioned incongruity. Hence is refuted also the objection that when there are uncles and nephews, then because the property belonged to the father of the uncles, therefore the nephews would get no share by reason of the absence of their ownership.

As for what has been said, namely,—“The grandsons and the great-grandsons whose fathers are alive &c.”—that too is wrong. For the capacity for presenting funeral oblations is not alone the criterion of the right to heritage, since the younger brothers are entitled to the heritage although they are not competent to offer oblations while there is the eldest brother. And the fitness for presenting oblations, (which the younger brothers have) is not wanting in grandsons too (while their father is alive). But when there are many claimants to the heritage, amongst the gentiles (*gotrajas*), and the like, then the fact of conferring benefits on the proprietor of the wealth by means of the offering of oblations and the like,—only excludes those that do not confer (such) benefit : it is not, however, the criterion here.

24. Whether partition is made in the lifetime of the father or after his demise, if the pregnancy of any of the father's wives or of any of a brother's wives, be evident, then partition ought to be postponed till parturition, by reason of the following text of Vasishtha,—“Now, the partition of heritage amongst brothers takes place after the delivery of sons by those women who are childless (but pregnant”). From the passage “after the delivery of sons” it appears that the postponement is to be made if their pregnancy is evident, but not if it is not evident.

Hence it is that Yogisvara has declared the mode of participation by one who is born subsequently to partition ;—“One who is begotten by one of equal class, after the co-parceners have been separated, is taker of the share.” When the co-parceners have been separated during the lifetime of the parents, whether by the desire of the father or by the desire of the sons, one who is subsequently brought forth by a wife of equal class is taker of the share: “is taker of the share,” means, gets the share allotted to the parents. The meaning is, that after the parents, he alone gets their share: the distinction is, that he gets the mother's share if there be no daughters. From the adjective “one of equal class,” (*savarnayám*) it appears that one who is begotten, however, by a wife of a different class, gets only his proper share from the father's wealth, and the entire share of his mother should there be no daughter. For this very reason, a son begotten by a wife of an unequal class after partition, gets only the share proper to his class, although the partition took place during the lifetime of the father: it must not be concluded that he is entitled to obtain all that belong to the father.

With this very intention, Manu says :—“But he who is born after partition shall get only the paternal wealth.” He shall get “the paternal wealth,” i. e. the wealth belonging to both the parents in the manner mentioned above; the term “only” shows that the brothers are not to make him participant of a share equal to their own, by deducting from their own shares. Also Gautama says :—“One born after partition (shall get) the paternal (share) only.”

But those who have been separated during the lifetime of the father, not knowing at the time that the mother

or her co-wife was with child, shall make the brother, born subsequently to partition, participant of a share equal to their own by deducting from their own shares. Thus Vishnu says:—"To one born after partition, his share shall be given by those who have been separated with the father." And it is the father alone who, by taking that share of the new-born son, given by the brothers, shall maintain him; by reason of his having a preferable right thereto, and by reason of the previously cited text, namely, "The wealth of those who have not attained to maturity, &c." (§. 23.)

Also the text, namely,—"One born before has no claim in the allotment of the parents; nor one begotten after partition, in that of a brother"—refers to this very subject. The meaning is, one born before partition, and (consequently) who has received his share of the paternal property, has no claim, *i. e.*, has no ownership in the allotment of the parents; and one begotten after partition has no claim in the share of a brother who has previously been separated.

And also what is acquired by the father, after partition, belongs only to the son born after partition, by reason of the following text of Vrihaspati;—"Whatever is acquired by the father himself who has been separated with his sons; all that belongs to the son born after partition; therein the sons born before have no claim; as in the wealth, so in the debts likewise, and in gifts, mortgages and purchases. They have no claims on each other, except for acts of mourning, and libations of water." He also says;—"The younger brothers of those who have made a partition with the father, whether children of the same or of a different mother, shall however take the paternal allotment." The reason here is the same as is declared in the text,—"One born before has no claim, &c."

But if some of the sons have been re-united with the father, then the after-born son is not entitled to the whole of the paternal property, but he shall participate with them. This is declared by Manu;—"Or he shall participate with those that are re-united with him." "Him," *i. e.*, the father.

If after the paternal property has been taken by the brothers, on partition after the demise of the father, a son is delivered by a wife of the father, whose pregnancy was not known at the time of partition ; they shall make him participant of a share equal to theirs, out of their own shares as modified by income and expenditure. This is said by Yájnavalkya ;—“Or his allotment must be made out of the visible estate corrected for income and expenditure.”—“Visible estate,” means what has been taken by the brothers. “Income,” means monthly, daily and annual increment to the visible estate. “Expenditure,” means the liquidation of the father’s debts, and the expenses attending the initiation of brothers and sisters, for it must be made at the expense of the common property ; it does not, however, include any expense that a brother had to incur, for that has no concern with it.—The meaning is, that out of the paternal property corrected for such income and expenditure, one born after partition shall get an equal share with those previously separated. What is said is this : including in the share of each of the co-sharers, the income arising therefrom, and subtracting the necessary common expenditure, and deducting a part from the remainder of every one’s share, a (posthumous) son born after partition shall be made an equal sharer. The particle “or” signifies an alternative based on distinct circumstances, with reference to the first half of this text, namely,—“One who is begotten by one of equal class after the co-parceners have been separated is taker of the share,”—and the distinct circumstances (to which the first half is applicable) have already been set forth.

Hálayudha, however, after interpreting the term “out of the visible estate” to mean, from the perceptible property of the father, but not from what is concealed,—says that this alternative refers to a son born after partition, who is possessed of less good qualities than the separated brothers.

This is to be rejected. Since concealed property too, when discovered after partition, is liable to be divided in equal shares, and there is no authority to show the inapplicability of the above rule to this case ; and since in supposing the above text to embody this restriction, there

would arise the objection of assuming some ultra-mundane purpose ; and since the text becomes perfectly consistent by the interpretation put by Vijnánesvara.

25. The mode of partition among brothers dissimilar in class is declared by Yogísvara :—“ The sons of a Bráhmaṇa, in the several classes, (*varṇasas*), have four shares or three or two or one ; the sons of a Kshatriya have three shares or two or one ; and the sons of a Vaiṣya have two shares or one.”

In the text, namely,—“ The wives of a Bráhmaṇa, a Kshatriya and a Vaisya may, as regards the classes, be three, two and one respectively ; the wife of a Súdra is one of the same class,”—Yogísvara has declared that a Bráhmaṇa may have three wives belonging to the (inferior) classes, different from that of himself ; (similarly) a Kshatriya two, and a Vaisya, one : and including one of the same class with them, a Bráhmaṇa may have four, a Kshatriya three, and a Vaiṣya two. If the enumeration referred to wives of similar as well as dissimilar tribes, then a wife of the Súdra class being excluded, the two of a Vaisya also, would be reduced to one of his own class ; consequently the part “ the wife of a Súdra is one of his own class” could not consistently be put in contradistinction to a Vaiṣya ; hence this enumeration is intended to have reference to the wives of dissimilar classes. This text has been so explained by Vijnánayogin.

That being so, (the meaning of the text in the first para. is this :—) “ The sons of a Bráhmaṇa” born of wives belonging to the Bráhmaṇa and other classes respectively ; “ in the several classes, (*varṇasas*)” i. e. according to the classes to which their mothers belong,—the affix *sas* (in *varṇasas*) shows that the term *varṇa* (class) is in the locative case and bears a distributive sense, agreeably to the grammatical rule,—“ To a noun in the singular number, signifying quantity, the particle *sas* is affixed in a distributive sense :”—to those who are begotten by a Bráhmaṇa or the like father on a Kshatriyá or the like wife, is applied the term *játi* (mixed class) such as that of Múrdhábhishtikta, and *játi* cannot possibly be comprised by the term class, therefore the meaning is, according to the classes to which the mothers belong ; “ have four shares or three or two or

one,"—what is said is, that the sons of a Bráhmaṇa, born of a mother of the same class, shall each get four shares; the sons of the same Bráhmaṇa born of a Kshatriyá mother, three shares each; the sons of the same person, born of a Vaisyá mother, two shares each; sons of the same person born of a Sudrá mother one share each. The passage, "in the several tribes" is to be construed with every clause in the latter half of the text: that being so, the sons of a Kshatriya born of Kshatriyá and other mothers shall each respectively get three shares, or two, or one; the sons of a Vaisya born of Vaisyá and Súdrá mothers shall each get two shares, or one respectively. A Súdra cannot have a wife of a different class, partition among his sons must be one among the sons of the same class,—which has been already mentioned.

Although the marriage of a Súdrá woman by a twice-born person is much censured, and espousing a Súdrá with the intent of having sons by her is on all hands prohibited, as in the text of Manu and Vishnu,—“Men of the twice-born classes, who, through infatuation, marry women of the lowest class, very soon degrade their family with their progeny to the state of a Súdra: according to Attri and the son of Utathya, he who marries a woman of the Súdra class, becomes degraded instantly; according to Saunaka, by the birth of a son; and according to Bhrigu, by having issue by her”—“by having issue by her,” means by having issue born of the Súdrá wife alone; —and marriage of a Súdrá woman by a Bráhmaṇa, however, is declared by them, to be more reprehensible than by a Kshatriya or Vaisya, thus,—“A Bráhmaṇa, if he takes a Súdrá woman to his bed, becomes degraded, and by begetting a son on her, he loses his priestly rank too”; —Yogísvara also says,—“The marriage of Súdrá wives by the twice-born persons, as has been declared (by other sages), is not approved by me, inasmuch as a person himself is born of her (in the shape of a son)” —and it may hence occur, that as there cannot be a son begotten by a Bráhmaṇa &c., on a Súdrá wife, why has his allotment been declared?

Still, a marriage for the purpose of pleasure, and a marriage for the purpose of religion (*i. e.* for the purpose

of having sons) being secondary to each other, a son may be born of a married woman of the Súdrá class by reason of the relation of the purposes through the act (whereby any one of the purposes may be attained); consequently the declaration of his allotment is certainly reasonable, in the same way as the declaration of his caste (*játi*) in the text,—“One born of a Súdrá mother (by a Bráhmaṇa father) is called a *nisháda* or *párasava*.” To this effect is the conclusion demonstrated in the Mitákshará on the book of Achára (or customary rites). Hence in the text,—“But for such as are impelled by love of pleasure the following may, in the order of the classes, be (wives of the twice-born) though not preferable,—Manu by saying “by love of pleasure” and “not preferable” ordains that the marriage of a wife of the same class is preferable. Sankha and Likhita say,—“Wives must be espoused, women of the same class are preferable for all persons: this is the principal rule. The succedaneous mode is: (wives of) four (classes) are allowed to a Bráhmaṇa, in the direct order; (wives of) three (classes), to a Kshatriya; (wives of) two (classes), to a Vaisya; (wives of) one (class), to a Súdrá.” By the term “in the direct order,” the inferiority of the next in order is indicated.

But Manu has declared two modes of partition among sons of the four classes, thus,—“Let a Bráhmaṇa son take three shares; a son born of a Kshatriyá mother, two shares; a son born of a Vaisya mother, one share and a half; and a son of a Súdrá mother, one share: or by dividing into ten equal shares, the entire property of all descriptions, let a lawyer allot legal shares in the following manner: a Bráhmaṇa shall get four shares; a son of a Kshatriyá mother, three shares; a son of a Vaisyá mother, two shares; a son of a Súdrá mother, one share.”—Of these the latter mode corresponds with what is declared by Yogísvara (para. 1.) And these are to be reconciled, as having reference to the sons of the Kshatriyá mothers &c., according as they are possessed of good qualities or are not possessed of good qualities. Hence it is that if the son of a Bráhmaṇa, born of a Kshatriyá mother, be the eldest by birth and possessed of good qualities, he gets an equal share with a son of a Bráhmaṇi mother; again

if a son begotten on a Vaisyá mother by a Bráhmaṇa or a Kshatriya father, be of the same description, he takes an equal share with a son born of a Kshatriyá mother. This is declared by Vrihaspati,—“A son begotten on a Kshatriyá mother by a Bráhmaṇa father, if eldest by birth and possessed of good qualities, becomes equal sharer with a son of the Bráhmaṇa class; so likewise a son born of a Vaisyá mother.” Likewise Baudháyana says,—“If, between a son born of a wife of the same class, and a son born of a wife of the class next in order, the son born of a wife of the class next in order be possessed of good qualities, he shall take the share of the eldest; for one possessed of good qualities becomes the supporter of the rest.”—Since it has been generally laid down in this text that a son born of a wife of the class next in order takes, by reason of his good qualities and seniority, an equal share with a son of the next better class, therefore it is to be observed, though it is not mentioned by Vrihaspati, that a son begotten on a Súdrá mother by a Vaisyá father, if, of the above character, gets an equal share with a son of the Vaisyá mother. The meaning of the portion,—“shall take the share of the eldest,” is only this,—shall take an equal share with a son of the next better class, by reason of this being consistent with the text of Vrihaspati, and by reason of the impropriety of taking a larger share than that of a son of a superior class.

When, however, a Bráhmaṇa has only one son born of a Súdrá wife, then he shall get a third part of his property; the remaining two parts shall go to *sapindas*, in their default to the *sakulyas*, and in their default to him who performs the funeral obsequies: as is declared by Devala,—“If a *nisháda* be the only son of a Bráhmaṇa, he gets a third part; a *sapinda* or a *sakulya* or the giver of the oblations, takes the other two parts”,—“*nisháda*” means a son born of a Súdrá mother by a Bráhmaṇa father.

But if a Súdra be the only son of a Kshatriya or a Vaisya, he gets a moiety, the other half is taken by those entitled to succeed to the property of a sonless man, in the same order. Accordingly Vishnu says,—“But when a Súdra is the only son of the twice-born he gets a moiety; the succession to the other moiety is the same as to the

property of a sonless man." By the term "twice-born" here, the Kshatriyas and the Vaisyas only are intended, because Devala has declared a distinct rule with regard to the Bráhmaṇas. "Only son" (*ekaputra*) is a compound of an adjective and noun.

But this rule (regarding a third and a moiety) has reference to a son by a Súdrá wife, having good character and many good qualities; for else, this would be in conflict with the text of Manu, namely,—"But whether he has or has not sons by other wives, no more than a tenth part shall be given to his son by a Súdrá wife,"—and,—"The son of a Bráhmaṇa, a Kshatriya or a Vaisya, by a wife of the Súdra class, shall not share the inheritance; whatever his father may give him, let that only be his property."

Although this mode of partition is generally laid down, still it refers to property other than land acquired by means of acceptance (of gift); because participation of that by sons begotten by a Kshatriyá or the like wife, is prohibited. So Vrihaspati says,—"Land received by acceptance shall never be given to sons by a wife of the Kshatriya or the like class; even if their father gives it, the son by a Bráhmaṇa wife may, nevertheless, resume it after the father's death."—Here the term "acceptance" being used, it is indicated that of lands acquired by means of purchase &c., they too shall have shares proper to their caste. Hence it is that, with regard to lands generally, Devala has laid down a separate prohibition levelled against a son by a Súdrá wife.—"A son sprung from a Súdrá mother and a twice-born father, is not entitled to a share of land; those born of wives of the same class shall take the whole of it: this is the settled law."

But as for the text of Manu,—"The son of a Bráhmaṇa, a Kshatriyá, or a Vaisya, by a wife of the servile class, shall not share the heritage; whatever his father may give him, let that only be his property,"—that has been explained by the southern writers, to apply when there is property given by the father through affection. But the oriental commentators say that it refers to a son by an unmarried Súdrá woman, destitute of good qualities. This is wrong; because it is not proper to discard the distinction men-

tioned in the latter part,—“whatever his father may give &c.,” and to assume a distinction between having and not having good qualities,—which is not mentioned (in the text); and because the share of a son by an unmarried Súdra woman will be stated (by Manu) when treating the subject of slaves. Hence the previous distinction only is right.

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### P A R T I I.

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§ 1. Principal and subsidiary sons, described by Yájnavalkya.—2. The legitimate son.—3. The son of the appointed daughter.—4. The wife's son including the son of two fathers.—5. The secret-born son.—6. The maiden-born son.—7. The son of the twice-married woman.—8. The adopted son.—9. The purchased son.—10. The son made.—11. The self-given son.—12. The son received with a bride.—13. The deserted son.—14. The son by a Sudra woman.—15. The *aurasa* is the principal, the rest subsidiary.—16. Partition by these.—17. Partition by the legitimate son and the son of the appointed daughter.—18. Partition by the legitimate son and the adopted son &c.—19. The conflicting tests, dividing the twelve sons into two classes the first of whom are heirs to kinsmen, how reconciled.—20. All this is relative to the same class.—21. The son by a Sudra woman cannot get the whole property.—22. Of the son of a Sudra by a female slave.—23. Of the son of a twice-born by a female slave.

1. In order to show the law of partition among principal and subsidiary sons, their nature is ascertained. On this subject, Yájnavalkya says:—“The legitimate son (*aurasa*) is one born of a lawful wife. Similar to him is the son of an appointed daughter (*putrikásuta*). A son begotten on a wife by a kinsman (*sagotra*) or any other is the wife's son. One secretly begotten in the house is declared the secret-born son. The maiden-born son is one born of an unmarried daughter; and is considered as son of the maternal grandsire. A son begotten on a woman who has not been deflowered, or on one who has been deflowered, is called the son of a twice-married woman. He whom his father or mother gives for adoption is declared to be the son given. The son bought is one who was sold by them. The son made, is one adopted, by

one's self. One who gives himself is self-given. One received while yet in the womb is the son received with a bride. He, who is taken for adoption, having been forsaken by his parents, is the deserted son."

2. It is said in the Mitákshará :—"A woman of equal class, espoused in a lawful form of marriage, is 'a lawful wife'; one born of her is the legitimate (*aurasa*) son". But in fact it is not to be so understood; for it is contradictory to what (the author of the Mitákshará) himself has said, viz.,—"because the *múrddhábhishtika* and other mixed classes sprung from superior fathers and inferior mothers, are included under the term legitimate sons"; and since, if the sons born of women espoused in forms of marriage which are not strictly lawful for Bráhmaṇas and others respectively, were not legitimate sons, then notwithstanding such sons, others would take the heritage. Hence the term "of equal class" is to be held to be used (in the Mitákshará) for the purpose of indicating superiority. But what is mentioned in the text, namely—"One born of a lawful wife," constitutes the definition, which excludes the wife's son.

Accordingly Manu says :—"He, whom a man himself has begotten on his own wedded wife, is the legitimate and the principal son." Vasishtha also says :—"Only twelve kinds of sons are mentioned by the ancients; the first is the legitimate son begotten by a man himself on his own wedded wife." Also Vishṇu says, "Now there are twelve kinds of sons, the first is the legitimate son, begotten by a man himself on his own wedded wife." Here in both the texts (of Vasishtha and Vishṇu), the term "wedded" (*sanskritáyám*) is to be considered as an explanatory adjunct of the term "own wife" (*svakshetre*) for otherwise there would be repetition. Devala says :—"He, who is begotten by a man himself on his own wedded wife, is called the legitimate son, is the first in rank and the perpetuator of the father's lineage." A'pastamba says :—"The sons of one who in proper time meets a lawfully wedded wife of the same class; they have a religious connection and cannot be deprived of the property of the father and the mother." Baudháyana says :—"One

who is begotten by a man himself on a wedded woman of the same class is known as the legitimate son. Also it is declared (by the ancient sages):—You are born from every limb, you are sprung from the heart, you are one's self in the name of son, you, who are such, live for hundred years; the ancestors put on a garland of lotus, (in joy) when you were in the womb; just as a person himself is in this world, so you become born here (a part of him); a man himself is called by the name of *put-tra* on account of the benefits conferred upon the father and the mother; because you deliver from the lower regions called *put*, therefore you are named *put-tra*."

In the texts of A'pastamba and Baudháyana, the term "of the same class," is used with the intention of indicating superiority. Hence the mention of the mode of partition among the sons too, who are begotten on wives of dissimilar class, while dealing with legitimate sons, becomes consistent. The text of A'pastamba is read in the Ratnákara as—"of the same class, who had no previous (husband)"—and is explained thus: "who had no previous (*apúrvám*) i. e. who had no previous husband; the meaning is—one who was not even affianced to another; this is said by the author of the *Prakásá*." In the Párijáta also it is said:—The term, "of the same class," here means that a woman of any twice-born class, is of the same class with a man of any twice-born class; and that a Súdra woman is of the same class with a Súdra.

It does not, however, imply that a Bráhmaṇi woman is equal in class to a Bráhmaṇa; a Kshatriyá to a Kshatriya and a Vaisyá to a Vaisyá: for if that were so, then the sons of Kshatriyá or other women espoused by a Bráhmaṇa or any other (of a superior class) would not be included under any of the twelve kinds of sons.

3. "The son of an appointed daughter (*putrikasuta*) is similar to him" (i. e. the legitimate son). The same is described by Vasishṭha,—"This damsel who has no brother, I will give unto thee, decked with ornaments: the son that may be born of her shall be my son." Also Manu says,—"He who has no son may appoint his daughter in this form to raise up issue for him: whatever child may

be born of her shall perform my obsequies. In this very mode Daksha himself, a creator of beings, appointed daughters for the purpose of multiplying his race. He, with a delighted heart, gave ten daughters to Dharma, thirteen to Kasyapa, and twenty-seven to the king Soma (moon) having received them with honor." Here it is laid down that a son, born of a daughter who is given in marriage with the express declaration of appointment, becomes the *putrika-puttra* of his maternal grandfather. That a son born of a daughter who is given in marriage without such express declaration, may be the *putrika-puttra*—is determined in the following passage of the Mitákshará in the book of A'chára:—"The epithet 'having brother' has been used to prevent the apprehension of the bride's appointment; by this it appears that a daughter may be appointed, though not declared to be so." Accordingly, also Gautama says:—"The sonless father shall give away the appointed daughter in marriage with the express agreement that the issue shall be mine. Some say that (even in the absence of any express agreement) a daughter becomes appointed by the mere intention of the father." It is said also in the Brahmapurána:—"A daughter who has been appointed to raise issue by her sonless father, whether mentally or in the presence of the king, fire and kinsmen, or anywhere else, previously to conception; even if she has received fees (from the bridegroom) and is given to the bridegroom whether by the father (himself) or (by any other) when the father is dead,—is known as the appointed daughter. Such a daughter gets an equal share from the father's property." Manu says:—"A son of the appointed daughter shall offer the first oblation to his mother, the second to her father, and the third to the father's father."

Or the (compound) term *putrika-suta* (in Yájnavalkya's text § 1) may mean the appointed daughter as well as son, i. e. the appointed daughter herself is the substitute of a son. Our opinion is that although she is (like a son) sprung from the breast (*uras*), still being a daughter she is similar to (and not the same as) a legitimate (*aurasa*) son. But the author of the Mitákshará says:—"She is declared to be similar to a legitimate son because (in a female child)

there are more of the mother's limbs, than of the father's limbs". So Vasishtha says:—"The appointed daughter herself, is the second son."

4. The Dvyámushyáyana or the son of two fathers is as described by Yájnavalkya in the following text—"A son begotten by one who is without male issue, on the soil of another, under an appointment, becomes legally the heir and the giver of oblations to both." Although he is sprung from the breast (or *aurasa* son) of the owner of the seed, still being begotten on another's wife, he is certainly inferior to the *aurasa* or legitimate son. Hence it is that the sage himself has given the following definition of the *aurasa* or legitimate son :—"The *aurasa* or legitimate son is one born of a lawful wife," (§ 1.) And we also will explain the Dvyámushyáyana as falling under the description of the wife's son, since the distinctive feature of the wife's son is not wanting in him.

Also Manu says:—"When by a contract of work, the soil is given in consideration of the seed: the owner of the soil and the owner of the seed are found in the world to be sharers of that."—Just as in the world by a contract for cultivation—when one has land but has no seed such as paddy for sowing, and another has seed, but no land; and if they enter into a contract, i. e. an agreement; that mine is the seed and yours the land, let us cultivate by sowing that in this, and let the produce grown therein be ours, then it is observed that both become sharers of the crops thereof. Similarly also, in the case of the Dvyámushyáyana or the son of two fathers, if one sows his (virile) seed in the soil of another, by an agreement that let the son begotten on the soil be ours,—then the issue begotten thereon belongs to both. Such a son of the wife, belonging to two fathers is called the Dvyámushyáyana.

Yájnavalkya, in defining the Dvyámushyáyana, (para. 1) has said "begotten under appointment", therefore what is intended is that the husband's younger brother or any other *sapinda* can, only when appointed by her venerable protector, beget a son on the wife of a brother and the like, in the prescribed mode such as rubbing the body with clarified butter; otherwise sin would be incurred by

both. Accordingly Manu says:—"The husband's younger brother, or a *sapinda* or a *sagotra*, being appointed by the venerable protector, and rubbing his body with clarified butter, shall with the desire of begetting a son, have an interview with a sonless woman after catamenia: one born in this mode becomes the son of the wife of a person."

When, however, without the agreement that the produce is to belong to both, seed is sown in the soil of another by the husband's younger brother or the like, then that son belongs to the owner of the soil alone. This also is declared by Manu,—"Should there be no agreement that the produce is to belong to the owner of the soil as well as to the owner of the seed, then clearly the fruit belongs to the owner of the soil, for the soil is more important than the seed."—Where without the agreement about the produce which is here the offspring, a child is begotten on the soil of another, that belongs to the owner of the soil alone. The meaning of the term "clearly" is that as in the world, if seed be sown in the land of another without any agreement with him, or if an elephant, a horse or the like belonging to one person causes a female of the same species belonging to another person to conceive, then in both cases, the fruit produced therein is seen to belong to the owner of the soil alone: and the reason for this is stated in the passage, "for the soil is more important than the seed;" the purport is that this is found in the case of cows, mares &c. Accordingly the meaning which follows is, that if there be an agreement, then only the wife's son becomes the son of two fathers or *Dvyámushyáyana*, by reason of the right of the owner of the seed; but the owner of the soil has right over the wife's son in both the cases, (*i. e.* whether there be an agreement or not). Hence it is that although Yájnavalkya has made no mention of the agreement with the owner of the seed, in the text,—"A son begotten by one without male issue &c.,"—still that is to be understood since the text is based upon the same foundation with that of Manu. Accordingly in the text,—"A son begotten on a wife by a kinsman (*sagotra*) or any other,"—a comprehensive definition of the wife's son is given, irrespective of the agreement; otherwise there would have been repeti-

tion : “a kinsman (*sagotra*)” means, the husband’s younger brother or a *sapinda* or the like : “any other,” signifies one other than a *sagotra*; this is the secondary alternative, for Manu says,—“or a *sapinda* or a *sagotra*.”

The A’cháryas say that appointment to raise issue is relative to an affianced woman only. Because raising up issue in pursuance of appointment is restricted by Manu to her case only, as in the text,—“When the husband dies after the verbal betrothal of a damsel, her husband’s younger brother shall have intercourse with her in this mode.” And because the appointment of a widow is rather prohibited; since after setting forth the appointment of a widow in the text,—“On failure of issue, the desired offspring may be obtained by a woman duly authorized, from the husband’s younger brother or a *sapinda*: but one who is appointed to raise issue on widow, shall, rubbing his body with clarified butter, and being silent, beget in night only one son and by no means a second,”—Manu himself forbids it in the following text,—“No widow should be authorized by regenerate men to beget children by other persons, for those that authorise her to conceive by other men, violate the primeval law: such appointment is nowhere mentioned in the Vedic texts on marriage; neither is the re-marriage of widows mentioned in the law of marriage: this practice, fit only for brutes, and reprehended by learned regenerate men was introduced among men while Veṇa held the sovereign sway: he, ruling the whole earth, and eminent among the royal saints, gave rise to confusion of tribes, while his intellect was perverted by passion: since his time, the virtuous censure him who through delusion of mind authorizes a widow to have intercourse with another man for the sake of progeny.”

Here it is to be remarked that the term “affianced” means a damsel who has been given in marriage by the person having the right to give, with the declaratory sentence,—“I give unto thee;” and that the term “widow” signifies one who has been married with the connubial ceremony ending in the rite of going seven steps, but whose husband is subsequently dead. But the term “affianced” does not include one who has been betrothed

by a promise at an indefinite time before marriage, such as with the following declaratory sentence,—“I will give this damsel in marriage, in the presence of gods, the spiritual preceptor and the holy fire, to him (or thee) who is (or art) not destitute of any limb, or not impotent, not degraded and free from the ten defects.” Hence it is that the term “husband” has been used by Manu; the previous executory promise being no part of the marriage ceremony, the promisee’s status of husband does not arise thereby, consequently he cannot reasonably be referred to by the term “husband.” Although a person does not become the husband of even a damsel betrothed by a promise, inasmuch as like the status of wife, the status of husband, which consists in the sacred initiation and which is to be effected by the ceremony of marriage, can never arise before its completion; still in the commencement of the connubial ceremony the use of the term “husband,” the status whereof will be the effect of it, is not unreasonable, like the use of the word sacrificial fire before the commencement of the sacrifice by the sacrificer. Hence it is that among western, northern and the like people, if the promisee dies a little before the marriage of the betrothed damsel, her marriage with another person is allowed by the learned, who are not censured. Otherwise in the *kali* age when the appointment to raise issue is prohibited, if the re-marriage of those whose marriage is not consummated be also forbidden, it would be a very objectionable practice. Accordingly the meaning (of the text of Manu) is this,—When “the husband” *i. e.* person about whom the ceremony of marriage takes place whereby the status of husband is effected, “dies after the verbal betrothal,” *i. e.* after the gift has been made with the declaratory sentence. Nor can it be said that let the appointment of widows to raise issue be optional, inasmuch as it is prohibited after having been enjoined. Because option cannot reasonably be supposed with reference to a fact, for it is not reasonable to say that a person undertaking to procreate issue on a widow, under appointment, does or does not incur sin. And because the law of appointment to raise issue cannot apply to widows, as it is restricted to affianced damsels, by the text,—“When the husband

&c." And because the injunction and the prohibition are not of equal force, inasmuch as those who give the authority are censured, as in speaking of the duties of women, unchastity has been declared to be the source of numerous faults, and as a life of austerity (led by the widows) has been highly praised. Accordingly in the text,—“ Let her rather emaciate her body by (living upon) the pure flowers, roots and fruits; but let her not when the husband is dead, pronounce even the name of another man,”—Manu himself has prohibited the resorting to the protection of another man, for livelihood; and in the text, —“ Longing for the unparalleled virtue of those having only one husband, shall continue till death, forgiving all injuries, observing strictly the rules and foregoing all sensual pleasure: many thousands of bachelor Vipras continuing in the order of the student have ascended the celestial regions without leaving any issue: like those life-long students, a chaste woman leading a life of austerities after the death of her husband goes to heaven though destitute of sons: a woman who being covetous for offspring proves faithless to her (deceased) husband, brings disgrace on herself in this world, and becomes excluded from the regions of her lord (in the next world,)”—he has forbidden with extreme censure the living with another man for progeny; and subsequently in the text,—“ When the husband dies &c.”—he himself has declared the legality of appointment relative to an affianced damsel. Having mentioned, “ in this mode,” he has declared other ceremonies, in the text,—“ Having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once after each course till delivery.” The pronoun “ this ” in the passage “ in this mode ” means the mode which has been mentioned before, *viz.* rubbing of the body with clarified butter, appointment by the venerable protector, &c.,—and includes what is stated in other Smritis. The term “ husband’s younger brother ” includes a *sapinda* and the like, in conformity with other texts. The term “ husband ” and the expression “ after the verbal betrothal ” have been already explained.

The following passage of the Mitákshará, namely,—“From this very text it appears that the person to whom the damsel is betrothed becomes her husband even without acceptance,”—must be taken as implying the meaning explained by us, since it has been shewn that the meaning which appears on the face of the passage, is erroneous. Accordingly there is the following passage further down,—“This espousal with the restrictions, namely, sprinkling the body with clarified butter &c. forms part of the intercourse to be had with the woman appointed to raise issue; but it does not secure for her the status of a wife of the husband’s younger brother. Hence the offspring begotten on her belongs to the owner of the soil, should there be no agreement; but if there be an agreement, it appertains to both by virtue of the agreement itself.”

Nárada says:—“The issue of the seed sown in another’s soil by the owner’s permission is considered as belonging to both the owner of the seed and the owner of the soil.” Sankha and Likhita say:—“According to Angirasas, the offspring belongs to him who espoused her with Vedic texts: but Usanás holds that the produce of the seed sown with an agreement between the owner of the seed and the owner of the soil belongs to both.” Kátyáyana ordains:—“When one raises produce with the consent of the owner of the soil; then both of them become here the sharers of the same, since the fruit could not come into existence in the absence of either.”

Háríta says:—“(If begotten) in the lifetime (of the husband) he is called the wife’s son, by reason of the absence of independence; but after the death, he is called the son of two fathers, by reason of the seed not being sown (by the husband): others say that soil bears not fruit without seed, nor does seed germinate without soil, hence both being necessary, the offspring belongs to both. Of these two fathers, he becomes first the offspring of the natural father. Let them offer two *pindas* in the (*nirvápa*) sacrifice in honor of the ancestors, or in one *pinda* declare the name of both (the fathers); let his son do the same when offering the second *pinda*, and his grandson when offering the third *pinda*. And let the remote descendants down to the seventh, pronounce the name of two while

offering *lepa* or divided oblations to the three ancestors entitled to the *lepa* or divided oblations."

The meaning of this text is :—If begotten "in the lifetime" i. e. of the owner of the soil, he is, by some, called the wife's son, who belongs to the owner of the soil alone ; the reason for this is,—“ by reason of the absence of independence” i. e. of the wife: “ but after the death,” i. e. of the owner of the soil ; although the absence of independence is the same, by reason of the subsequently cited text of Manu, viz.—“ A sonless woman keeping unsullied &c.; ”—still the son does not belong to the owner of the soil alone ; and the reason for this is, “ by reason of the seed being not sown” i. e. the owner of the soil must have given permission to the owner of the seed ; “ soil bears not fruit &c.” shows that what has been said is reasonable : “ in the *nirvápa*” which means that in which oblations are given, i. e. the sacrifice in honor of ancestors ; there let the Dvyámu-shyáyanas “ offer” separately “ two *pindas*” to two fathers, “ or in one *pinda*, declare the name of both” the fathers ; it is to be understood that in each of the *pindas* the names of two ancestors are to be declared ; for Apastamba ordains,—“ If he be the son of two fathers, he shall offer each oblation to two ancestors”—i. e. by reason of the three ancestors being double ; “ the second,” i. e. in offering the second and the third oblations : “ the three ancestors entitled to the *lepa*,” i. e. while offering divided oblations to them shall pronounce the names of two.

Also Nára ña says :—“ The sons of two fathers shall separately offer to the two (sets of ancestors) the *pindas* and libations of water ; and shall likewise take a moiety of the property of the owner of the seed and of the owner of the soil.”—The term “ moiety” indicates a share that is reasonable under the circumstances.

Baudháyana says :—“ The son of two fathers shall offer oblations (in this way) ; shall proclaim the names of both in each oblation ; three oblations shall be offered to the six : he who does so, errs not.”—“ The six” means the two fathers, the two grandfathers and the two great-grandfathers. He again says :—“ The son begotten on the wife of a person deceased or impotent or diseased, by one duly authorized, is the wife's son ; he is the son of two fathers,

belongs to two *gotras*, performs the funeral obsequies of both and takes their heritages."

Manu says :—“ He who is begotten on the duly appointed wife of a man deceased or impotent or diseased is called the son of the wife.”

Here in all cases where the owner of the soil is alive, but is incapable of begetting a son on account of disease &c., the appointment and the agreement may, according to the circumstances, be made by the venerable protectors and the husband also; but if he be dead, then by the venerable protectors alone.

Thus there are two descriptions of the *kshetraja* or wife’s son: one has two fathers, and the other has the owner of the soil for his father.

5. “One secretly begotten in the house” by a gallant, and subsequently ascertained to be of the same class, is the secret-born son of the owner of the soil. Thus Manu says,—“ When a son is begotten on one’s wife, and it is not known who is its father, he is the secret-born in the house and belongs to him from whose soil he is sprung,” —“ And it is not known &c.,” means, that although it is not known by what particular person he is procreated, still it must be held that it is known that he is begotten by a person of equal class, by reason of the following text of Yogisvara.—“ This law is propounded by me in regard to sons equal by class.” This text will be explained hereafter.

6. “The maiden-born son is one born of an unmarried daughter,” begotten by a man of equal class, he “is considered as a son of the maternal grandsire:” that is, the son belongs to him, of whose daughter he is born. But one born of a married daughter becomes the secret-born son of the husband; as is said by Manu.—“ When a maiden daughter secretly conceives a son in her father’s house, that son sprung from the maiden daughter is called by the name of the maiden-born son and belongs to the husband.”—From these texts it appears that one begotten on an unmarried damsel residing at her father’s house, by a gallant of equal class, is called a maiden-born son, and that he becomes son of the maternal grandfather.

But in conflict with this is the following passage of the Brahmapurána cited in the Ratnákara,—“ But one begotten in the father’s house, on a damsel who has not been given (in marriage), by a man of equal class is called the maiden-born son and becomes the son of him to whom she is given (in marriage);” also the following text of Nárada cited in the same book,—“ The maiden-born son, also the son received with the bride, and he who is secretly born: their mother’s husband is to be known as their father; and they are pronounced to be heirs.” Here (*i. e.* in the passage of the Brahmapurána) there is no conflict as to his being the maiden-born son, who is begotten on an unmarried damsel in her father’s house, by a man of equal class: but the conflict lies in the portion,—“ and becomes the son of him to whom she is given in marriage;” also in what has been declared in the above text of Nárada, namely,—that the damsel’s husband becomes the father of the maiden-born son, of the son received with a bride, and of him who is secretly born; and in what Manu says, namely,—“ and belongs to the husband:” since it is not said (in these texts) that he becomes a son of the maternal grandsire. As for the reconciliation made by the author of the Mitákshará, namely,—“ if begotten on a maiden daughter, he becomes the son of the maternal grandfather, and of the husband alone, if begotten on a married daughter,”—that is not satisfactory. For if that were so, then such a son could not be called a maiden-born son (*kánina*), being not begotten on an unmarried daughter, meant by the term maiden or *kanyá*. It cannot, however, be said that the term *kanyá* (maiden daughter) refers to any female child (whether married or unmarried). Since the definition (of the maiden-born son) would be unmeaning, inasmuch as it would not exclude the secret-born son, who is begotten by a daughter,—all women being daughters of some body. Again, the conflict with the passage of the Brahmapurána is not got rid of (by this), for there the term—“ who has not been given in marriage”—has been used. Accordingly also, it is difficult to reconcile the inconsistency with the text of Manu. The author of the Kalpataru, however, who has cited the texts contradictory to each other, has not at all reconciled the conflict, for like

a thoughtless man he makes no mention of the distinct cases to which the texts are applicable. Indeed, he having set forth many texts showing that the maiden-born son belongs to the maternal grandfather, has immediately cited the text of Nárada and the passage of the Brahmapurána, which are in conflict with the above texts. There are cited the following text of Vasishtha,—“The maiden-born son is the fifth; he, whom an unmarried damsel begets through passion in her father’s house, is the maiden-born son, he becomes the maternal grandfather’s son: this is also declared (by the ancient sages),—‘If a sonless daughter begets a son in the house; in him the maternal grandfather has a son’s son, he shall offer *pinda* and take the property’”—likewise the following text of Nárada,—“The maiden-born son, whose father is unknown, and whose mother was senseless, shall offer *pinda* to the maternal grandfather and take his property”—and also the following text of Baudháyana,—“If one approaches a damsel who has not been espoused and who has not been given; the son begotten on her is the maiden-born son.”

We remove the difficulty thus: The texts which declare that the maiden-born son belongs to the maternal grandfather, are relative to a son begotten by a man of equal class on a damsel who has not in any way been given: and the texts which declare that such a son belongs to the husband, have reference to the son begotten by a man of equal class, on a damsel who has been declared to be given, but who has not acquired the status of wife, which is effected by the marriage ceremony ending in the rite of going seven steps. The term, “who has not been given” in the text of Nárada (in the passage of the Brahmapurána?), and the term “who has not been given,” in the text of Baudháyana mean, the ceremony of whose marriage has not been completed,—but they do not signify, who has not at all been given. And this is consistent with reason. By the declaration of the intention (to give the damsel in marriage), the destruction of the father’s right and the generation of the bridegroom’s right are commenced; and the father’s right not being wholly destroyed (just after the declaration of the intention) the term “maiden-born son” may reasonably be applied,

and there being the commencement of the bridegroom's right, the son may reasonably belong to him ; but it is consistent with reason that when the father's right is complete (over the damsel), the son born of her becomes the son of the maternal grandfather. The same is also the meaning of the text of Manu (para. 1) :—A damsel, who has been declared to be given, but whose marriage ceremony has not been completed, continues a maiden, because the status of the intended bridegroom's wife has not been acquired ; a son sprung from such a maiden daughter is called by the name of the maiden-born son and belongs to the husband *i. e.* to the person by whom she is married : hence the phrase "in her father's house" is consistent as supporting this meaning, for immediately after the marriage she enters the husband's house. The passage of the Mitáksará also (on this subject) bears the same meaning : "un-married" *i. e.* whose marriage ceremony is not commenced, "married" *i. e.* whose marriage ceremony has commenced ; —the past participle in the word "married" *údhá* is used in the sense that the act is commenced, but not in the sense that the act is completed. But if the marriage ceremony of a damsel has been completed, then a son procreated on her by a gallant of equal class, becomes the secret-born son : hence it is said,—“one begotten secretly in the house” *i. e.* born in the husband's house without his knowledge.

7. Twice married women are of two descriptions : the first is one who was not deflowered on her first marriage, and is espoused by another ; and the second is one who has, previously to the marriage, been polluted by intercourse with the other sex. One born of such a woman is the son of the twice-married woman ; hence it is declared (by Yajnavalkya § 1),—“begotten on a woman who has not been deflowered or on one who has been deflowered.” Manu says :—“If a woman who has been deserted by the husband or a widow begets (a son) by becoming, of their own accord, the wife of another person ; he is called the son of the twice-married woman.” Kátyáyana says :—“When a woman having deserted a husband who is impotent or degraded, gets another husband ;

a son born of her is the son of the twice-married woman, and it is clear that he belongs to his natural father." Vasishtha and Vishnu say :—"The fourth is the son of the twice-married woman." His being the fourth is agreeably to the order stated by them.

8. He, whom the mother with her husband's assent or the father gives to another, becomes his adopted son ; thus Manu says :—"That son whom his mother or father affectionately gives with water, at a time of distress, and who is alike (by class) is known as the adopted son." By specifying "at a time of distress," it is indicated that the giver incurs sin in the absence of distress ; the mother and the father (may give) separately or jointly ; the term "with water," indicates the mode of gift and acceptance ; "alike" means equal in class ; "affectionately" (*pritisanyuktam*) is an adverb.

An only son shall neither be given nor accepted. So Vasishtha ordains,—"A person, produced from the virile seed and the uterine blood, is an effect whereof the mother and the father are the cause : the mother and the father are competent to give, to sell, or to abandon him. But let no one give or accept an only son, since he is to continue the line of the ancestors. Let not a woman, however, give or accept a son unless with the assent of her husband."

Some say that the adoption of a son by a woman without the assent of her husband, being prohibited in this text, the son taken by a widow whose husband died without giving authority does not become an adopted son. This is not tenable ; since a sonless person has no access to heaven, and the procreation of a son is ordained to be necessary, therefore the permission which he was bound under the Sástras to give, is not to be considered as wanting in such a case. Nor can it be said that thus the portion, namely, "unless with the assent of her husband"—would be useless, inasmuch as there is no case to be excluded, and as the authority which a person is bound under the Sástras to give, is in all cases necessary (and so assumed as given). Because the prohibition is levelled against a woman who wishes to adopt a son for her own sake, when her husband who is desirous of having

*moksha* or freedom from the necessity of repeated deaths and births, or who has a son by another wife, cannot possibly give an authority to adopt. So it is declared,—“ If one among all the wives of the same person be mother of a son, then all of them becomes, by that son, mothers of male issue: this is ordained by Manu.” The purpose for which a son is desired, namely, the performance of *sraḍḍha* &c. being served by the son of a co-wife, no son need be adopted by such a woman without the assent of her husband. The purport is, that in such a case, the object of both (the husband and the wife) is accomplished by that son; since he being the *aurasa*, is the principal son to the husband, while to the wife, he is a subsidiary son, like an adopted son; hence another son shall not be taken in adoption without the permission of the husband. But in reality the meaning of the part,—“ unless with the assent of her husband,”—is, that while the husband is alive, a son shall not be adopted by the wife without the permission of the husband; because the following text,—“ If among uterine brothers, one becomes father of a son, then all of them become by that son, fathers of male issue: this has been declared by Manu”—which is similar to the previous text,—(If one among all the wives &c.)—has been explained in the Mitákshará and the Smritichandriká to mean that when a brother’s son is available for making a subsidiary son, such as an adopted son, any other shall not be made a substitutionary son.

But when the husband is dead, the assent of those only is necessary, on whom she is dependent. In this view, the object of the prohibition becomes reasonable. Therefore, although the husband be deceased without giving permission to adopt, still an adoption by the widow is not invalid. The reason also for putting the interpretation mentioned above on the two texts of Manu—has been set forth in the Mitákshará itself, thus:—“ Otherwise in the texts, namely,—‘ The wife and the daughters also &c.’ —and—‘ The property of a woman without issue &c.’ —which refer to the heirs who take the property of one destitute of issue,—the declaration of the succession of the brother’s son and the step-son respectively, in default of the wife &c., and in default of the husband &c., would be

in conflict with the above texts." This will be dealt with in detail while explaining the texts.

Although there may be many sons, still the eldest shall not be given in adoption; for in the text,—"As soon as the eldest is born, a man becomes father of a son"—he is declared to be preferable in performing the duties of a son.

The reason being equal, the prohibition in respect of an only son and the eldest son, applies to the cases of the son bought, the son self-given, and the son made. Hence in the anecdote of Harischandra in the Bahbricha Bráhmaṇa, there is found a suggestion of the prohibition in respect of the eldest son in the case of the son bought:—"He, on taking the eldest son, said."

The mode of accepting a son is propounded by Vasishṭha,—"A person being about to adopt a son shall take an unremote kinsman, or a near relation of a kinsman, having convened his kindred and announced his intention to the king, having performed the *homam* with recitation of the hymns denominated *vyāhṛiti* in the middle of the dwelling-house." Here by the term "unremote kinsman" is intended, the exclusion of one who is remote by country and language. Similarly, in the cases of the son bought and the like, for the reason is the same. In the Kalpataru, however, the text is read as—*adūrabándhavam asannikrīṣṭam eva*, and is explained thus: *adūrabándhavam*, (rendered above into an unremote kinsman), means, one whose maternal uncle &c. are near; *asannikrīṣṭam*, means, one whose virtues and defects are unknown; *eva* means even. And he has written the following as the remaining portion of the text of Vasishṭha:—"But if a doubt arise, let him set apart like a Súdra one whose kindred are remote, for it is declared (in the Vedas), 'many are saved by one,'"—and explained thus: 'But if a doubt arise,' i. e., should a doubt with respect to his caste arise, on account of his kinsmen not being near, 'let him set apart like a Súdra' destitute of initiation: the intention is that even a Súdra may be a son adopted.

9. "A son bought is one who was sold by them,"—"by them," i. e., by the mother and the father: that is,

one given to another by the mother with the husband's assent, or by the father, on receipt of price; 'excepting an only son and the eldest son, at a time of distress,'—is also to be inserted (in the definition); he must be one of the same class, by reason of the concluding text,—“This law is propounded by me in regard to sons equal in class.” As for the text of Manu,—“He, who is purchased from the mother and the father to become a son, is the purchaser's son bought, whether similar or dissimilar,”—that is interpreted,—“whether similar or dissimilar” in good qualities, but not dissimilar in class, for there would be conflict with the text,—“This law is propounded, &c.” Also Baudháyana says,—“He, who being purchased from the mother and the father, or from either, is taken for progeny, is the son bought.”

10. “A son made is one” of an equal class, “who” having been induced by the show of money, field, &c., is asked—‘be you my son,’ and “is adopted by the man himself” who is desirous of having male issue; provided that he is destitute of the mother and the father, for if they be alive he cannot, by reason of his dependence on them, become another's son. Also Manu and Vishnu say,—“When one alike (in class), capable of discriminating between right and wrong and possessed of the virtues of a son, is adopted, he is to be known as the son made”;—“alike,” i. e., alike in class, “is adopted” by the mother and the father jointly or separately.

11. “One who gives himself is self-given,” i. e., one who himself has given himself to another, i. e., one who comes of his own accord by saying, ‘I become your son,’ and is bereft of the mother and father, or is abandoned by them, is equal in class and is not degraded,—is called a self-given son. So Manu says,—“He, who being bereft of the mother and the father or abandoned (by them) without any cause, delivers himself to another, is pronounced his self-given son”;—“abandoned,” i. e., by the mother and the father at a time of famine or the like, on account of inability to afford maintenance, &c., “without any cause” such as degradation,—that is to say, independent, (so that he can give himself).

12. "One received, while yet in the womb, is a son received with a bride," *i. e.*, one, who is in the womb, being begotten by a gallant of equal class in the unmarried state of a damsel, and is received or *vinna*,—*vinna* being the past participle of *vid*, to get,—when she is married in the pregnant state,—is called one received with a bride, and becomes the husband's son. So Manu says,—“When a pregnant damsel is espoused, whether known or not known (to be so), the child in the womb belongs to the husband and is called the son received with a bride.” Also Vishnu says,—“The seventh is the son received with a bride; he is the son of a damsel married when pregnant, and belongs to the husband.” “The seventh,” *i. e.*, with reference to the order in which the enumeration is made by the sage.

13. “He, who is taken for adoption, having been forsaken (by the parents), is a deserted son,” *i. e.*, one who is abandoned by the mother and the father, and is taken by a person desirous of having male issue,—becomes son of the taker, and is called a deserted son. These two must be alike in class. Likewise, Vishnu also says,—“The eleventh is the deserted son, belonging to him by whom he is taken, having been forsaken by the father and the mother.” Vasishtha says,—“The fifth is the deserted son, who is taken, having been forsaken by the mother and the father.” “The eleventh” and “the fifth” place is agreeably to the order in which enumeration is made by the two sages respectively.

14. The son of a Súdra woman, however, who is called *párasava*, and is enumerated by Manu among the subsidiary sons, is not mentioned by Yájnavalkya; inasmuch as the sage lays down a restrictive rule in the shape of the conclusion contained in the text,—“This law is propounded by me in respect of sons equal in class,”—and as he can, by no means, be considered as equal in class. Hence, the sage speaks of such a son in the text,—“One begotton even on a female slave &c. (§ 22),” since a son of a twice-born by a Súdra woman, cannot succeed to his paternal property even in default of other sons.

This will be resumed. Likewise, Manu says,—“The son whom a Bráhmaṇa impelled by passion begets on a woman of the servile class, is a carcass though living and therefore called a *párasava*, (a living carcass).” Also Baudháyana says,—“A *párasava* is one begotten on a woman of the servile class by a person belonging to the first of the regenerate tribes, impelled by passion.”

15. Of these (twelve descriptions of sons,) those described after the *aurasa* or legitimate son are subsidiary sons, but the *aurasa* alone is the principal one. Accordingly Manu says,—“These eleven (kinds of sons,) beginning with the wife’s son, as have been described above, are declared by the wise substitutes of sons—for failure of the object.”—The term “for failure of the object,” *i. e.* for failure of the object of marriage &c.—forms the reason for substitution. But in the Smritichandriká it has been explained thus,—The wise, *i. e.* the sages apprehending, in default of the legitimate son, the extinction of the ceremonies of the *sráddha* and the like that might be performed by him, have declared the eleven substitutionary sons, as what should be adopted. Vrihaspati says,—“There are thirteen kinds of sons, that are described by Manu in the order of priority: of them the legitimate son perpetuates the lineage, the appointed daughter and the rest,”—this text has been explained by adding,—‘are declared as what should be made subsidiary sons.’ Vrihaspati declares,—“As in the absence of clarified butter, the linseed oil is declared by the virtuous, as the substitute, so are the eleven descriptions of sons, in the absence of the legitimate son and the appointed daughter.” In the Brahmapurána, (it is said):—“The son given, the son self-given, the son made, as well also the son purchased, and the deserted son are always to be maintained: those that belong to a different *gotra* or family, present distinct oblations, and perpetuate a different lineage, become impure for three days on the occasions of birth and death, as well of those that give food and raiment as of those to whom the seed and the soil belong. The Vipras have rarely a *párasava* son of the servile Súdra class. But persons of the royal class, that is, labouring under a curse, and is gradually perishing, and

is always engaged in warfare, have sometimes these; if there be neither the legitimate son nor the appointed daughter, then they have eleven sons of different descriptions beginning with the wife's son, who, however, merely perpetuate the lineage; all of them perform like a slave, their *srāddha* &c. on the specified occasions. The secret-born son, the maiden-born son, the son received with a pregnant bride, the wife's son and the son of the twice-married woman, these five, the wealthy Vaisyas may not have even for fear of punishment from the king; they may have all the rest. The Súdras whose occupation is service, who depend upon others for livelihood, and whose person is under the control of others, can have no son anywhere; therefore of a male slave and a female slave, none but a slave can spring."

16. Having thus determined the nature of these sons, their right to heritage is now determined, on this Yogisvara says,—“In default of the preceding one among these, every succeeding one is the giver of the *pinda* and the taker of the heritage.” Inasmuch as a distributive sense is indicated by the term “every succeeding one,” the term “the preceding one,” also, is to be taken in a distributive sense.

17. When there are a legitimate son and the son of an appointed daughter, then agreeably to the above text it would follow that the son of the appointed daughter is not entitled to the heritage while there is the legitimate son, but Manu propounds an exception (to the above rule,) in the text,—“A daughter having been appointed, if a son be afterwards born, the division of heritage must in that case be equal; since a woman has no right to specific deductions for seniority.” Also Vrihaspati says,—“The legitimate son alone is pronounced to be the owner of the paternal property; an appointed daughter is declared to be equal to him; the other sons, however, are to be maintained.” Nor is it reasonable to say that if the son of the appointed daughter be born first—(in point of time) and subsequently the legitimate son be born, then because the son of the appointed daughter

is the eldest by birth and not a female, he is therefore entitled to specific deductions for seniority. Since he holds the status of a son's son, as is declared by Manu in the text,—“When a daughter, appointed or not appointed to raise issue, gives birth to a son begotten by a man of equal class; in that son, the maternal grandsire has a son's son; let him present oblations and take the heritage;”—“has a son's son,” since the appointed daughter is a (subsidiary) son, hence her son though a daughter's son is a son's son. And since it is nowhere declared that a son's son is entitled to a greater share (than a son) by reason of seniority. Nor can it be said that this is in conflict with the text,—“The son that will be born of her shall be my son,”—as it affirms sonship of the son of an appointed daughter. Because the above meaning being in conflict with Manu, this text must be explained as intending the term son in a secondary sense on account of his being the giver of oblations. As the term son is applied to an appointed daughter in a secondary sense she being not a male child, so also to the son begotten by an appointed daughter who is begotten by a man himself; since although he is male he is not begotten by the man himself, and since the term ‘son’ primarily signifies a male child begotten by a man himself.

18. Likewise it would follow from that (text of Yogiśvara § 16), that other sons too are not entitled to any share, should there be the next preceding son; but an exception is ordained by Vasishṭha in the text,—“If a legitimate son be born after a son has been adopted, the son given is entitled to a quarter share.” Here the term “son given” is indicative of others also, such as a son bought, for they are equally adopted; accordingly Kātyāyana says,—“If a legitimate son be born, the rest of the sons are entitled to a quarter share provided they be *savarna* (of the same class); but if they be *asavarna* (of a different class) they are entitled to food and raiment only.” The meaning of the text of Kātyāyana is this: *savarna*, i. e. the wife's son, the son given &c., they are entitled to a quarter share when there is a legitimate son; *asavarna*, i. e. the maiden-born son, the secret-born son, the son received

with a pregnant bride and the son of the twice-married woman; these however, are not entitled even to a quarter share when there is a legitimate son, but are entitled to food and raiment. Accordingly Vishṇu prohibits the participation of a quarter share by a maiden-born son and the like, if there be a legitimate son, in the text,—“But the maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman are not preferable; they are not at all entitled to participate in the *pinda* and the heritage.” In default of the legitimate son &c., the maiden-born son &c., are certainly entitled to take the paternal property in its entirety, by reason of the text—“In default of the preceding one among these, every succeeding one &c.” (§16.) As for the text of Manu, *viz.*,—“The legitimate son alone is the master of the paternal estate; but for the sake of humanity, he shall allow sufficient maintenance to the rest,”—that also is to be explained to prohibit the quarter share in case the son given and the like be inimical to the legitimate son and devoid of good qualities; and to refer to the maiden-born son &c., since they being declared (in the text of Kātyāyana) to be entitled to food and raiment only, this text should be taken to be based upon the same foundation.

Again Manu himself has declared that the wife’s son is entitled to a fifth or sixth share,—“Let the legitimate son, when dividing the paternal heritage, allot to the wife’s son a fifth or a sixth share out of the patrimony.” The distinction is, that a sixth share should be allotted to him, if there be both animosity (towards the legitimate son) and want of good qualities; and a fifth, if there be either of these defects. But the quarter share for the son of an appointed daughter, whom Manu has declared to be entitled to an equal share, and the third share for the wife’s son who has been declared to be entitled to a fifth or sixth share,—as mentioned in the passage of the Brahmapurāna, namely,—“The legitimate son though next born, is entitled to the entire patrimony; the wife’s son takes a third share; and the son of the appointed daughter, a fourth,”—are to be considered to refer to a son of the appointed daughter who is utterly devoid of good qualities.

and is of a different class, and to a son of the wife who is highly endowed with good qualities and friendly to the legitimate son.

In order to show that, in default of the legitimate son, the son given takes the entire estate, Manu has set about the text,—“But if the son given of a person be endowed with all good qualities, he shall certainly take the estate of that person,—though accepted from a different *gotra* or family,—the particle ‘though’ signifies, and *a fortiori* if accepted from the same *gotra* or family. The very same sage has prohibited the taking by the son given of the property belonging to the natural father, in the text,—“A given son must not claim the family and the estate of the natural father: to him who gives away his son in adoption, the ambrosial *pinda* which follows the family and the estate is lost.” The *pinda* which the giver would have received from that son is lost to him; “ambrosial,” i. e. causing satisfaction to the manes of ancestors,—is the adjunct of *pinda*; “which follows the family and the estate,” embodies the reason..

The following text relative to the given son alone and showing his right to a quarter share when there is a legitimate son, is declared by Vasishṭha,—“If after he has been taken in adoption a legitimate son be born, the given son takes a quarter share.” A text of Kātyāyana has already been cited (para. 1) which is applicable also to the son bought and the like. That text is read in the Kalpataru,—“are entitled to a third share;” and if this reading be correct, then that text is to be explained to mean that the participation of a third share takes place in case the son given and the like are endowed with more good qualities than the legitimate son.

Manu himself has declared also the equal participation of the wife’s son with a legitimate son, in the texts,—“If a younger brother begets a son on the wife of an elder brother, then the distribution in such a case shall be equal; this is the settled law. The (wife’s son who is) inferior, cannot get in right of the superior; the father is superior on account of pro-creation, therefore (the wife’s son) shall legally take the aforesaid share. He, who protects the estate and the wife of a deceased brother,

shall, after generating a son to the brother, make over his estate to him. If there be a legitimate son and a wife's son entitled to the property of the same father, each shall take what belonged to his natural father, and not the other." The legitimate son being the subject commenced, although it seems that the equal participation of the wife's son is mentioned relatively to the legitimate son, still because the meaning that is suggested by the context cannot be adopted should there be conflict of texts, therefore it is to be understood that the above text means the participation of a share equal to that of the natural father. Hence in the subsequent passage the superiority of the natural father is set forth. Also by the text,—"he shall, after generating a son to the brother &c.,"—it is declared that he shall give him the property of him to whom the wife's son belongs, *i. e.* such a son being the representative of the brother shall take a share equal to his.

Similarly are to be anyhow reconciled the texts of Vrihaspati and other sages, which declare greater or lesser shares for the wife's son &c. Thus Vrihaspati says, "The other five or six sons beginning with the wife's son are equal shares." Hárīta ordains,—"One about to distribute shall allot one-twenty-first to the maiden-born son, one-twentieth to the son of a twice-married woman, one-niueteenth to the son of two fathers, one-eighteenth to the wife's son, one-seventeenth to the son of an appointed daughter; and the rest shall be given to the legitimate son." In the Brahmapurāṇa it is said, "A legitimate son though next born (or begotten on a woman of inferior class) takes the entire estate, the wife's son takes a third part, the son of an appointed daughter a fourth, the son made a fifth share, the secret-born son a sixth, the deserted son a seventh share, the maiden-born son an eighth share, the son received with a pregnant bride a ninth part, the son bought gets a tenth, the son of a twice-married woman, however, obtains the next, the self-given son a twelfth; but the son of a Súdra woman, a thirteenth part of the paternal property; a person of the same *gotra* or a virtuous student (shall take the remainder)." Here with every clause should be construed, 'when there is a legitimate son,' by reason of the text.—"In default of the preceding

one among these, every succeeding one &c.,” (§16.) It has previously been shown (para. 2) to what case is applicable the first verse of the above passage, namely, “ A legitimate son &c.” The reconciliation of the others also is to be made as is proper according to the local customs or agreeable to a comparison of the qualities.

19. Manu has divided the sons into two sets of six, and declared that the first six are heirs (*dáyádas*) and kinsmen, and that the latter six are not heirs but kinsmen, as in the text,—“ The legitimate son and the wife’s son also, the son given and the son made, the secret-born son and the deserted son, these six are heirs (*dáyádas*) and kinsmen : the maiden-born son, the son received with a pregnant bride, the son bought, likewise the son of a twice-married woman, the self-given son and the son of a Súdra woman, these six are not heirs but Kinsmen.” The meaning of this text is as follows :—In default of any near heir of the *sapindas* and the *samánodakas* of their father, the first six are entitled to their estate, but the latter six are not entitled to the same ; but the division into those that are heirs (*dáyádas*) to the father and those that are not so, would not be reasonable, because the right of all the sons in default of the preceding one, to take the property of the father is equal, by reason of the text,—“ In default of the preceding one among these &c.,” (§16); and because the text,—“ Neither the brothers nor the parents but the sons take the estate of the father,”—which is declared after the text,—“ The legitimate son alone is the master of the paternal property”—establishes that all the subsidiary sons are entitled to take the paternal property ; and because the term *dáyáda* is mostly applied to heirs other than the son, in many texts such as,—“ Shall compel even the *dáyádas* to give :” but the status of kinsman, *i. e.* the qualification of performing the ceremonies of offering libations of water &c., by reason of being *sapinda* or *samánodaka*, is common to both the sets of six.

But Háríta says,—“ Six are kinsmen and heirs ; the son begotten by a man himself on his chaste wife, the wife’s son, the son of the twice-married woman, the maiden-born son, the son of the appointed daughter, and one secretly

born in the house are kinsmen and heirs: the son given, the son bought, the deserted son, the son received with a pregnant bride, the son self-given and the son found by chance are not heirs of kinsmen."—"The son begotten by a man himself on his chaste wife," means the legitimate son; "the son found by chance" is one that is bereft of the mother, father &c., and is suddenly found by a person who, after satisfying him says,—'be you my son,' and so adopts him,—that is to say, the son made.

Now here the conflict with Manu is clear. Because by him, the maiden-born son and the son of the twice-married woman are enumerated among those that are not heirs to kinsmen; while by Hárīta among those that are kinsmen as well as heirs: again the son given, the son made and the deserted son are reversely enumerated. Hence the conflict is to be removed thus; their applicability is to be determined with reference to qualities such as equality in class, or with reference to local customs.

Baudháyana, however, concurs with Manu in what he says (about this subject) in the text,—"The legitimate son, the son of the appointed daughter, the wife's son, the son given, the son made, the secret-born son and the deserted son are pronounced to be heirs: the maiden-born son, the son received with a pregnant bride, the son bought, likewise the son of the twice-married woman; the self-given son and the son of a Súdra woman are pronounced to be kinsmen."

Devala, having described the legitimate son, the son of the appointed daughter, the wife's son, the maiden-born son, the secret-born son, the deserted son, the son received with a pregnant bride, the son of the twice-married woman, the son given, the self-given son, the son made and the son bought, says,—"These twelve sons are declared for the sake of issue: some are sprung from himself; some are sprung from another; some are acquired; and others become sons independent of any exertion. Of these, the first six are heirs to kinsmen, the latter six are so to the father alone: a distinction also among the sons according to the priority in the order of enumeration is ordained: all these sons indeed are considered entitled to take the heritage of one having no legiti-

mate son ; but should a legitimate son be subsequently born, they have no right on account of seniority : of these sons, those that are equal in class take a third share ; but those inferior in class, shall remain dependent upon him, receiving food and raiment."—Of the sons enumerated, it is clear who are sprung from himself and so forth.

Nárada also says,—“The legitimate son, the wife’s son, the son of the appointed daughter, the maiden-born son, the son received with a pregnant bride, likewise the secret-born son, the son of the twice-married woman, the deserted son, the son given, the son bought, likewise the son made, and the self-given son ; these are pronounced to be the twelve descriptions of sons. Of these, six are kinsmen and heirs ; and six are not heirs but kinsmen. Each, according to the priority in order, is considered as superior ; and the next in order, as inferior. On the death of the father, they succeed to his estate according to their order : on default of the superior let the inferior take the estate.”

Manu says,—“On failure of the superior, the inferior in order is entitled to the heritage ; but if there be many equal, all become sharers of the estate.”

Vrihaspati says,—“The son given, the deserted son, the son bought, the son made and likewise the son of a Súdra woman ; all these when pure in class, are considered as sons of middle rank, entitled to the heritage : the wife’s son is censured by the virtuous, so likewise are the son of the twice-married woman, the maiden-born son, the son received with a pregnant bride and the secret-born son.”

Háríta says,—“The son of a Súdra woman, the self-given son, and the son purchased ; all these who are pronounced kinsmen are undoubtedly *káñdaprishtha* ; there is no doubt that, inasmuch as he having left his own family joins a different family, therefore by reason of that misconduct he is called *káñdaprishtha*.

Yama says,—“The son given at a time of distress, the self-given son and the son of a Vaishpaví, all these three described by Manu are *káñdaprishtha* ; since the family is called the *káñda*, and they left their previous family. But let him who is eldest remain in the family. He, who having left his own family, betakes himself to a different

family is considered as *kāñdaprishṭha* on account of that misconduct."—In the Kalpataru it is said that Vaishṇavī means a Súdra woman.

20. In the following text, Yogisvara lays down a restrictive rule in the shape of the conclusion of what has been said,—“This law propounded by me refers to sons equal in class.”—This law which is propounded by me in the text,—“In default of the preceding one among these, every succeeding one &c.,”—is to be understood to refer to the wife’s son &c., that belong to the same class with the father, and not to those of a different class. Of them the maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman can be of the same class, through their natural father; for they themselves have not the distinctive feature of the pure and mixed classes. Since Yogisvara himself having discriminated the pure and mixed classes, says, “This law is declared to refer to married women.”

The sons sprung from a father of a superior class and a mother of an inferior class,—and belonging to the mixed classes such as the Múrdhábhishikta, are included under the definition of the legitimate; hence the mode of partition by them has been declared by the text,—“The sons of a Bráhmaṇa have four shares or three or two or one according to the class &c.,” (Part 1, § 25, para. 1.) Consequently, it is on their default, that the wife’s son and the rest are entitled to the paternal estate.

21. The son of a Súdra woman, however, although legitimate, is not entitled to take the entire paternal property, notwithstanding the default of other sons. Accordingly, Maṇu says,—“Whether one has a son or is destitute of a son, let him not, according to law, give more than a tenth to a son by a Súdra woman.” Whether one has a son by a wife of equal class or destitute of sons by a wife of equal class; when he is dead let not his wife’s son &c., or any other heir give to a son by a Súdra woman more than a tenth out of his property. From this text it appears that in default of a son by a wife of equal class, a son by a Kshatriya or a Vaisya wife, takes the entire paternal property. As for the right of a son by a

Súdra woman to take one share, declared by Yogisvara and other sages in texts like,—“The sons of a Bráhmaṇa, according to the class, take four shares, or three, or two, or one &c.,”—that is to be understood to refer to a Súdra woman’s son of a very good character; since, otherwise, there would be conflict with Manu. And the text of Manu, namely,—“A son of a Bráhmaṇa, a Kshatriya or a Vaisya, by a Súdra woman, is not entitled to take the heritage,”—has already been explained.

22. A special rule is propounded by Yájnavalkya with regard to the partition of the property of a Súdra, in the text,—“One begotten by a person of the servile class, even on a female slave takes a share by the choice (of the father); when the father is dead, let the brothers make him partaker of a half share: when there is no brother, let him take the whole, provided there be no daughter’s son.” A son begotten on a female slave by a Súdra obtains a share by the choice of the father: after the father’s death, however, let the brothers, *i. e.*, the sons by a Súdra woman lawfully wedded, make him, *i. e.*, the son of the female slave, partaker of a share equal to half of their own share. Here from the plural number (in brothers) it should not be erroneously concluded that every one must give half of his share; for if that were so, then one having many brothers would get a much larger portion of the property than they, and that would be very unreasonable: but the sons by a Súdra woman, each take a half share of what is allotted to a legitimate son; the singular number (him) and the plural number (brothers) indicate the class and the individual. But in default of a son by a lawfully wedded Súdra woman and of his sons &c., the son of a female slave, also, gets the entire property of the Súdra father; this appears to be the purport.

23. From the use of the term “a person of the servile class” (in Yájnavalkya’s text, § 22) it appears that one begotten by a twice-born person on a female slave, cannot, notwithstanding the desire of the father, get a share, or a half share after his death; the taking of his entire property is out of the question: but he is entitled only to maintenance, provided he be not disobedient.

## CHAPTER III.

### LAW OF SUCCESSION

TO THE ESTATE OF A PERSON SEPARATED AND NOT RE-UNITED.

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#### PART I.

§ 1.—General rule of succession.—2. The wife's succession; wives of different classes ; effect of marriage in different forms ; her right to perform religious ceremonies, and to take the entire estate.—3. Limitation of her right ; two texts of Kátyáyana, interpretation of these by the author of Smritichandriká ; that by Jímútaváhana, stated and criticized ; conclusion.—4. Other texts on the priority of the wife's succession.—5. Texts in conflict with these.—6. Reconciliation by Dháresvara.—7. Criticized.—8. Reconciliation by Srikara ; criticized.—9. Another reconciliation ; criticized.—10. Reconciliation by the author.—11. The term “sonless” in texts on succession explained ; *sapinda* relationship explained.—12. Jímútaváhana's objection to the above reconciliation, stated at length.—13. The same criticized ; re-union explained ; chaste widows entitled to maintenance only when the husband is unseparated.

1. Now are mentioned those, who, in default of the principal and subsidiary sons, are entitled to take the estate of one who is deceased, degraded, gone to retirement or the like.

On this Yogisvara says,—“The wife (*patni*) and the daughters also, the parents, brothers likewise, their sons, the gentiles (*gotraja*), cognates (*bandhu*), a pupil, the fellow student : in the absence of the preceding one, every succeeding one is indeed heir to the estate of a sonless person, who departed for heaven. This rule extends to all classes.” The meaning is : The wife and the rest shall, agreeably to the order in which they are mentioned, *i. e.*, in the absence of each preceding one, the next succeeding one,—take the estate of a person who departed for heaven, *i. e.*, is deceased, and is sonless, *i. e.*, destitute of

the twelve kinds of sons previously described ; this rule is to be understood to apply to all, *i. e.*, the mixed classes whether they are sprung from a high-caste father and a low-caste mother, or from a low-caste father and a high-caste mother,—as well as to the (four principal) classes, such as the Bráhmaṇa.

2. First of all the *patni* or the lawfully wedded wife takes the estate. The term *patni* itself signifies a woman espoused in the prescribed form of marriage, agreeably to the Aphorism of Páṇini,—“The term *pati* (husband) is changed into *pathi* (meaning the correlative) implying relation through a sacrifice.” The singular number (in the term *patni* in Yogisvara’s text, § 1) implies the class ; hence if a person leaves more wives than one, then all of them,—first those of the same class (with the husband) and after them those of a different class,—shall take the husband’s property dividing the same amongst themselves.

From the use of the term *patni* (in Yajnavalkya’s text, § 1) it appears that a wife espoused in the *ásura* or the like (disapproved) form of marriage has no right to take the property when there is another wife espoused in a lawful form of marriage. To this effect is the following passage of law,—“A woman, however, who is purchased by giving price, is not to be considered as a *patni*; for neither in a sacrifice in honor of the gods, nor in one in honor of the departed ancestors she (can be the companion of her husband, *i. e.*, the purchaser, when performing such a sacrifice) : the poets (prophets or sages) look upon her as a female slave.”—In this text her status of a female slave is mentioned with the intention that she has not the right of becoming the indispensable companion in the performance of ceremonies having spiritual merit for their end, but not with the intention that intercourse with her is forbidden ; for she being espoused (though in a disapproved form), the objection of her being the wife of another man, cannot arise. Accordingly Manu, having described the virtuous and the vicious forms of marriage, declares that the virtues and vices attach solely to the issue (of such marriages),—“If a wife is espoused by a man in the blameless forms of marriage, the offspring becomes unblameable ; and if in the

reprehensible forms, the progeny becomes reprehensible ; therefore the reprehensible forms should be studiously avoided." The reprehensibility of the offspring, again, refers to the absence of good conduct and character, not, however, to exclusion from the castes pure or mixed ; for the sole fact of being begotten on a married woman by the man who marries her, determines the caste pure or mixed (of the offspring,) by reason of the text,—" This law is ordained with regard to married women." Hence, by the text,—" For neither in a sacrifice in honor of the gods, nor in one in honor of the departed ancestors she &c."—the right to be the companion is prohibited.

Accordingly it is indicated by the term *patni* that the competency also, of performing the rites in honor of the ancestors, is a reason for the succession to the property of the husband. Hence Prajāpati says that the estate of the husband may be taken only by a wife who is chaste and who is competent to associate with the husband in the performance of ceremonies enjoined in the Sruti and the Smriti, as in the text,—" Dying before the husband, a wife devoted to the husband partakes of his consecrated fire ; but if the husband die before her, she takes his property : this is the primeval law." Also Vriddha Manu says,— " The sonless wife (*patni*) alone, keeping unsullied the bed of her husband and persevering in religious observances, shall offer oblations to him and take his entire share." With reference to this text, the author of the Smritichandrikā says, that since the order of reading of the latter half, is opposed by the order indicated by the sense, therefore the widow first obtains his entire share and then presents oblations. This is to be rejected. Because nothing is intended to be expressed by the order : the sole object of the text is to establish her right to both. Otherwise the funeral ceremonies would have to be postponed till the share be obtained : but that is prohibited in various passages of law. Also because there would arise the objection of assuming some spiritual purpose. By the particle "alone" in the term "the wife alone," it is shown that even to the performance of the funeral ceremonies of her sonless husband, she alone, like a son (had there been one) of her sonless husband, is entitled, notwithstanding a brother and

the rest enumerated in the text,—“The wife and the daughters also &c.”

The very same meaning is expressed at length by Prajāpati,—“Having taken his moveable and immovable property, the precious and the base metals, the grains, the liquids, and the clothes, let her duly offer his monthly, half yearly and other funeral oblations. With funeral repast and by pious liberality, let her honor the paternal uncle of her husband, the spiritual preceptor (or the parents) and daughter’s sons, the children of the sisters, the maternal uncle, and also decrepit persons, guests and females (or the other wives of inferior status).”—“The base metals” are lead, tin and the like (*i. e.* other than gold and silver); “funeral repast” signifies the food intended for the ancestors; “pious liberality” means reservoir of water and the like (works for public good) or the fees and the like (given to Brāhmaṇas) for the performance of a ceremony. What is intended is this: Having obtained the husband’s entire estate including even the immoveables, the *patni* should, under the superintendence of the husband’s relatives, perform the ceremonies conducive to the spiritual benefit of her husband and herself, (the ceremonies) which can be accomplished by wealth and which a female is competent to perform.

The same sage declares that those that cause injury to her who conducts herself in this way are to be punished as robbers,—“The gentiles and the cognates, however, who become her adversaries or injure her property, let the king chastise by inflicting on them the punishment of a robber.”

The following passage prohibitory of the taking by the *patni* of immovable property, is quoted in the Smriti-chandrikā as a text of Vrihaspati;—“When the husband is separated, the pledge and various others that are recognised as property, the wife (*jīvā*), after the death of her husband, obtains, excepting the immovable.”—And in order to prevent the inconsistency of this text with that of Prajāpati, namely,—“Having taken his moveable and immovable &c.”—it is concluded that this refers to a wife destitute of daughters, by rejecting the opinion of others, namely, that this passage refers either to a wife

without good character or to the property of an unseparated husband,—as being contradictory to the remaining part of the above text, namely,—“Even when partition has been made, the wife (*stri*), though preserving her character, is not entitled to immoveable property.”

The author of the Madanaratna points out a defect in the above conclusion on the ground that the above text of Vrihaspati is an interpolation inasmuch as it is not cited in the Mitákshará, the Kalpataru, the Haláyudha and the other commentaries,—but that the text of Prajápati, namely,—“Having taken his moveable and immoveable &c.”—is a genuine one, since it is quoted in all the commentaries; and characterizes the conclusion come to by the author of the Smritichandriká to be unreasonable, being simply an emanation from his inner consciousness: and he himself forms the following reconciliation, supposing the text of Vrihaspati to be a genuine one, namely, that the taking of the entire property including the immoveable—refers to a wife espoused in the forms of marriage, called Bráhma and the like, inasmuch as the term *patni* is used in these texts; but that the text of Vrihaspati is relative to a wife espoused in the A'sura or the like form of marriage, because the terms *jáyá* and *stri* only are employed in that text.

This is refuted in the Smritichandriká itself, in which it is said that a wife wedded in the A'sura or the like form is not comprised by the term *patni*; and the texts also, in which the term *jáyá* and the like occur, refer to her (*i. e.*, the *patni*), inasmuch as these texts rest on the same foundation (with the texts in which the term *patni* is used). As for what is said, namely, that the conclusion arrived at by the author of the Smritichandriká is a dogmatic one,—that also is not tenable. Because, if there be a daughter, then through her son there is a possibility of the enjoyment of immoveables, and of the spiritual benefit of the proprietor, therefore even the immoveables are taken (by the wife); but one that is destitute of daughter does not take the immoveable property by reason of the absence of such possibility: in this therefore may consist the reason (for the above conclusion of the author of the Smritichandriká). Accordingly it has been previously set forth

that without the consent of the sons the father has no right to alienate even his self-acquired property.

3. As for what appears from the text of Kátyáyana, viz.—“When the husband is dead, (the wife) preserving the honor of the family shall take the share of the husband for her life (or livelihood), not, however, the right to make gift, mortgage or sale,”—namely, that the wife succeeding to the property of the husband is entitled to mere maintenance out of the estate, but has no right to make gift, mortgage or sale thereof;—that also refers to the want of right to make gifts to players, dancers, &c. for secular purposes. Because he (Kátyáyana) himself sets out her right to make gifts for spiritual purposes, also to mortgage or sell so much as is sufficient for such purposes, in the text,—“Persevering in religious observances and fasting, leading a life of austerity, and constantly engaged in the control of passion and in making gifts, (the widow) though sonless, ascends to heaven,”—from the phrase “ascends to heaven” it appears that she has power to make gifts, &c., even in religious ceremonies that are optional, and *a fortiori* in those daily and occasional ceremonies which are enjoined by the Sástras, and the omission whereof entails demerit. And because to the same effect is the text of Prajápati cited before, namely—“Having taken the moveables and immoveables &c.” The author of the Smritichandriká, and others, say, that in this text too, the first (of the series of duties) being enumerated, her power to perform the optional ceremonies (at the expense of her husband’s property) follows.

There is again another text of Kátyáyana himself, namely,—“Let the sonless (widow), preserving unsullied the bed of her husband, and abiding with her venerable protector, only enjoy (her husband’s property) being moderate until her death, after her, let the heirs (or co-heirs, *dáyádas*) take.”

In interpreting this text the author of the Smritichandriká says;—The meaning is, “let her being moderate,” i. e., patiently enduring any opposition, offered by the (husband’s) co-heirs (*dáyádas*), to the application of the wealth, “enjoy until her death.” This again refers to such undivided property as the widow herself has taken

for her livelihood, when the father-in-law &c. being engaged in other pursuits are unable to afford protection, maintenance and the like ; for had it referred to divided property, it would have been contrary to the doctrine propounded by Manu and others.

The oriental commentators, however, putting an interpretation which appears on the face of the text (of Kátyáyana) say that the wife has no power of making gift, mortgage, or the like (disposition) of her husband's property, in the following passage :—“ ‘ Abiding with her venerable protector,’ i. e., with her father-in-law or the like (kinsman of her husband), let her only enjoy her husband's estate during her life ; but let her not, according to her pleasure, deal with it as with *stridhan* by making a gift, mortgage, sale, or the like : after her, let the heirs, i. e., the daughters and others who would be entitled to his property (in default of the wife), take the estate, but not the kinsmen ; since they being inferior to the daughter &c., ought not to exclude these : for the widow debars them (the daughter &c. from succession), and the absence of the obstacle (in the shape of the widow) is equal either in the case of the destruction, or in the case of utter absence, of her right ; they (the daughters &c.) therefore cannot reasonably be excluded. Nor can it be said that “ let the heirs” to *stridhan* “ take,” for then there would be tautology, inasmuch as Kátyáyana himself has declared in other texts the heirs to *stridhan*. Hence those persons who, in the text,—“ The wife and the daughters also &c.”—are in the absence of the preceding ones, exhibited as next heirs to the property of a sonless deceased person [who was separated and not re-united] shall, in like manner as they would have succeeded in case of the utter absence of the wife's succession, succeed to the residue of the estate after her enjoyment, upon the demise of the wife in whom the succession had vested. At that time the succession of the daughters &c. is proper, since they confer greater spiritual benefits than others. The following passage of the Mahábhárata in the chapter on the Religious merit of Gifts, is also in support of the above view,—‘ It is ordained that the property of the husband when devolving on wives has enjoyment (*upabhoga*) for its use : let not women on any account make a waste of her husband's property.’—Enjoyment again should not be by wearing delicate apparel and similar

luxuries ; but since a widow may benefit her husband by the preservation of her person, the enjoyment of property sufficient for that purpose is authorized. Thus in the text,—‘With funeral repast and pious liberality &c.’—Vrihaspati intends by the term paternal uncle, any *sapinda* of her husband ; by the term daughter’s son, the progeny of her husband’s daughter ; by the term sister’s son, the husband’s sister’s son ; and by the term maternal uncle, her husband’s mother’s family : to these alone, let her give presents in proportion to the wealth, at her husband’s funeral rites, and not to the family of her own father. With their consent, however, she may give to them also. Accordingly Nárada says,—“When the husband is dead, his kin are the guardians of his sonless widow. In the disposal of property, and care of herself, as well as in her maintenance, they have full power. But if the husband’s family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a *sapinda*.”

On this it is to be said. Is it, that even when a gift or the like disposition of her husband’s property is made by the widow,—this is *per se* invalid ? This, however, is not reasonable, since her succession to the entire estate of her husband being declared in the texts of Manu and other sages, her proprietary right arises thereto ; hence it would be contradictory to say that gifts &c. (made by her) are *per se* invalid. Accordingly Jimútaváhana himself, having cited the following texts prohibiting gift and the like disposal of immoveable property, namely,—“But neither the father nor the grandfather is so, of the whole immoveable property,”—“Separated or unseparated kinsmen are equal in respect of immoveables &c.”—and—“Immoveables and bipeds, although acquired by a man himself &c.”—concludes that these texts are intended to show that moral guilt is incurred by a man of evil disposition, who makes gift and the like merely for the purpose of putting the family to distress ; but they do not establish the invalidity of gifts and the like in themselves ; for it would be unreasonable to say that they do so, because the proprietary right which is defined to be the power of disposal according to pleasure,—in the immoveable property is not dis-

tinct from what it is in other objects, and because a fact cannot be altered even by a hundred texts. Hence in the manner mentioned by him, let, in this instance too, moral offence, by reason of the violation of the prohibition, be incurred by a widow who out of evil disposition makes gifts &c. of her husband's estate, solely for the purpose of putting the kinsmen (of her husband) to distress. And certainly a moral offence too is not committed by one who makes gifts for religious purposes, or who sells or mortgages for the purpose of her own maintenance. Nor can it be said that from the restriction expressed by the term, "only enjoy," as well as from the declaration—"After her let the heirs take,"—what alone can follow is her incompetency to make gifts &c. as in the case of joint property. Because this (*i. e.* the separate property) which is the subject of exclusive right is different from joint property which is the subject of common right. Nor can it be asserted that inasmuch as the enjoyment by the widow (of her husband's estate), which follows (from the assertion of her heirship,) cannot be taken to be intended to be declared (in the text of Kátyáyana), therefore the text is solely for the purpose of prohibiting gifts &c., and accordingly her want of right to make gifts &c. inevitably follows. Because, (you say) a fact cannot be altered, hence it cannot but be admitted for the sake of the consistency of that rule, that the text is intended to prohibit the waste of the property by useless gifts &c. Otherwise if her right (to make gifts &c.) be not admitted, then there would be an irreconcileable conflict (of the text of Kátyáyana) with the texts enjoining gifts, namely,— "... engaged in the control of passions and in making gifts ...,"—and—" ... with funeral repast and pious liberality let her honor &c." As for what is said, namely, that let the heirs, *i. e.*, the daughters &c. who are declared in the text,— "The wife and the daughters also &c."—to be entitled to the estate in default of the wife, take, since the default of the wife who forms the obstacle (to the succession of the daughters &c.) is equal, as in the utter absence, so in the destruction, of her right :—that is only plausible. Again, as there would be tautology if the term "heirs" be interpreted to signify the heirs to *stridhan* by reason of their being mentioned in

another text, similarly there would be the same defect of tautology (in the interpretation put by you), for the heirs of the husband also are mentioned by Kátyáyana in a separate text.

But in fact when a person in whom right vested dies, it is proper that his property should be inherited by his near relations; hence, as the words wife and the like are relative terms, what have the daughters and the like of the former proprietor to do, when right to the husband's estate had vested in the wife? Hence, although the absence of the preceding one, the previous absence (of something that subsequently comes into existence) the destruction (or the future absence of some thing previously existing), the utter absence (or the absence without relation to any particular time), the relative absence of the obstacle, and the reciprocal absence (or the negation of identity) are similar (all these being of the same category, namely, negation), still when the owner of any property is dead, then if he leave no male issue, his property is inherited by his relations, such as his wife &c.: this is what the text (of Yájnavalkya, § 1) means. Otherwise there would be great confusion, since if the daughters and the rest having succeeded to the property of their father &c. die, then in succession of their children, the father &c. of the father who was the previous owner, would take the property. Hence when the wife after having succeeded to the property of her husband dies, the residue of the property after her enjoyment would have devolved on (her heirs such as) the daughters and the like, by reason of texts like the following,—“And the daughters, the residue of the mother's property after liquidating her debts &c.”:—but it is prevented by the passage,—“After her let the heirs take.” And the construction of the text (of Kátyáyana) is arrived at thus: on perusing “let the heirs take,” the question occurs, whose heirs? and the word “of the husband” connected with the word “bed” suggests itself and is construed with “heirs;” accordingly the signification of the text is as follows,—“After her let the husband's heirs or *dáyádas*”, i. e., those that are entitled to take his undivided property, “take” also what remains of the estate of a separated brother after the enjoyment thereof by his wife; and not the heirs to

the estate of the wife, such as daughters and the like. Thus the last part (of Kátyáyana's text) expressing a meaning which is not expressed anywhere else, becomes significant: but according to the other view, this part would become useless, inasmuch as it would merely repeat what is declared in other texts.

Therefore, it is established that in making gifts for spiritual purpose as well as in making sale or mortgage for the purpose of performing what is necessary in a spiritual or temporal point of view, the widow's right does certainly extend to the entire estate of her husband; the restriction, however, is intended to prohibit gifts to players, dancers and the like, as well as sale or mortgage without necessity. Accordingly the term "being moderate" is inserted; the meaning is, that on obtaining the property she shall not uselessly spend the property. The passage in the Mahábhárata on the religious merit of gifts, however, strongly supports our view, for it begins thus: "It is ordained that the property of the husband when devolving on wives has enjoyment for its use." Here enjoyment (*upabhoga*) signifies enjoyment allied to religious duty, not however vicious enjoyment; "ordained," i. e., declared by Manu and others. In the latter half (of the passage) the very same thing is expressed, namely, "women shall not waste", i. e., uselessly expend the property of their husband; by the phrase "on any account" it is intimated, that waste is under all circumstances reprehensible; *apahára* (waste) is theft,—making useless gifts to dancers, players, and the like, and the wearing of delicate apparel &c., the tasting of rich food &c. and the like, also being improper for a widow who is enjoined to restrain her passions, are equal to theft: thus the term *apahára* (waste) is used in a secondary sense. But gifts and the like for religious purposes are not so, and consequently cannot be included under the term *apahára* or waste. Therefore everything is consistent.

4. There are also many other passages of law, establishing the preferable right of the wife to succeed to the estate of her sonless husband who was separated but not re-united. Thus Vrihaspati says,—"In the Vedas and in the Smritis as well as in popular practice, a wife is de-

clared by the wise to be half the body of her husband equally sharing the fruit of pure as well as impure acts. Of him, whose wife is not deceased, half the body survives. Why then should another get his property, while half his person is alive? Let the wife of a sonless deceased man take his share notwithstanding kinsmen, the father, the mother, or the uterine brother be present."

Yogisvara also by declaring the right of every succeeding one to accrue in default of the preceding one, ordains the wife's succession in preference to all others.

Also Vishnu says,—“The wealth of a sonless man goes to his wife; on failure of her it devolves on daughters; if there be none, it belongs to the father; if he be dead, it goes to the mother; on failure of her, it goes to the brothers; on their default, it goes to the brother's sons; if none exist, it passes to a kinsman (*bandhu*); on their default, it devolves on a distant kinsman (*sukulya*); on failure of these, it comes to the fellow-student; and for want of all those heirs the property goes to the king, excepting the wealth of a Brâhmaṇa.”—Here the term *bandhu* (kinsman) signifies a *sapinda*, and the term *sukulya* (distant kinsman) means a *sagotra* or one descended from a common ancestor in the male line (other than a *sapinda*): if by the term *bandhu* the cognates of the father and the like were comprised, then there would be a conflict with the order mentioned by Yogisvara.

Also Kâtyâyana says,—“The wife is entitled to the estate of the husband, provided she is not unchaste; but on her default, a daughter, if she be then unmarried.”

There is also another passage of law,—“Now of a sonless person, the wife born in a (good) family, or also the daughters, in their default the father, the mother, the brother and (his) sons are pronounced (to be heirs).”

In these texts it is established that the wife is first of all entitled to the estate left by the husband.

5. There are texts again, which are in conflict with the above texts. Thus Nârada declares the succession of the brothers in spite of the wife, and the maintenance of his wife, as in the text,—“Among brothers if any one die without issue or enter a religious order, let the rest (of the

brothers) divide his wealth, excepting the wife's separate property. Let them allow a maintenance to his wives (*strīnām*) until the end of their lives, provided they preserve unsullied the bed of their husband ; but if they behave otherwise, the brothers may resume her allowance."

Also Manu declares that the father or a brother is entitled to succeed to the property of a sonless person, not the wife, as in the text,—“ Let the father or the brothers take the estate of a sonless person.”

The following passage of law asserts that the mother or the paternal grandmother is entitled to succeed to the estate of a sonless person,—“ Let the mother take the estate of her childless son ; and if the mother too be dead, let the father's mother take the property.”

Also Sankha, Likhita, Paithinasi and Yama declare the succession of the wife in default of the brothers and the parents, as in the text,—“ The wealth of a sonless person, who departs for heaven, goes to the brothers ; if there be none, let the parents take, or let the senior wife take.”

The wife who is, by Yogisvara, placed first to the exclusion of others, is declared also by Devala, to be entitled to succeed on failure of the brothers and the like, as in the text,—“ Next let brothers of the whole blood divide the estate of a sonless person, or daughters also equal (in class) ; or let the father if he survive, or (half) brothers of the same class, or the mother, or the wife inherit in their order.”—Here by the term “ brothers”, half brothers are meant, since whole brothers are separately enumerated.

Also in the following text, the wife is not even enumerated by Kātyāyana, though father and others are mentioned as heirs,—“ When a man who is separated, dies, then in default of sons let the father, or the brother, or the mother, or the father's mother in their order take the estate.”

6. Of these texts, conflicting with each other, Dhāresvara makes the following reconciliation :—If the wife of a sonless brother who was separated but not re-united, accepts the appointment to raise issue, then and then only she obtains the estate of the husband ; but if she be not solicitous of the appointment, then she gets mere maintenance like the wife of one who was unseparated or re-united.

ted : for it is through appointment alone, that the right of the wife of a sonless person accrues to the estate of her husband. Nor (can it be said) on what principle is this conclusion based ? Because the wife's right of inheritance is shewn in many passages of law to arise through children alone. Accordingly Gautama says,—“ Let kinsmen allied by the *pinda* or funeral oblation, by *gotra* or family name, and by descent from the same patriarch share the heritage ; or the wife of the childless person, or she (may) seek to raise up offspring.”—Let kinsmen allied by funeral oblation, by family name, and by descent from the same patriarch, take the heritage of a childless man ; or let his wife take the heritage, if she seek to raise up issue to him : the particle ‘or’ conveys the meaning of ‘if’ ; otherwise, the sense of alternative would be unreasonable, since there is no similarity between taking of the heritage and seeking to raise up issue. Likewise, also Manu declares that the wife's succession to the divided property is in right of the progeny, as in the text—“ He who protects the estate and the wife of a deceased brother, shall after generating a son to the brother, make over his estate to him.” So likewise, even if partition has not taken place, Manu intimates that the right of inheritance arises through the offspring, thus, —“ If a younger brother begets a son on the wife of an elder brother, then the distribution in such a case shall be equal ; this is the settled law.” Therefore by the principle of co-existence and the absence of separate existence, it is established that the wife's right of inheritance is in right of progeny and not otherwise. Vasishtha also, in the text,—“ An appointment shall not be accepted through covetousness for the heritage”—forbids an appointment to raise up issue to the husband if sought from covetousness, and thereby clearly intimates that the widow is entitled to the succession if she consents to the appointment and not otherwise. Accordingly it follows that the text of Náráda, namely,—“ If any one of the brothers die &c.,”—and similar texts refer to a widow who is unwilling to be appointed. Likewise in the text, namely,—“ Their childless wives, conducting themselves aright, must be supported ; but such as are unchaste should be expelled, and so indeed should be those that are perverse”—Yogisvara also, by

ordaining maintenance for the wives of the blind and the like who are destitute of sons, and thus intimating the superiority of the son's right to the wealth, indicates, by the parity of reason, that the wife's right of succession is in right of the progeny alone. The following passage of law, namely,—“Property has come into existence for the purpose of sacrifices; therefore those, who are incompetent to perform these, are not entitled to inheritance, but are entitled to food and raiment”—by declaring the exclusion from inheritance, of sons &c. though males who are incapable of performing sacrifices, does *a fortiori* oppose the right of succession of widows who are incapable of performing sacrifices. So also another text of law, namely,—“Property is ordained for sacrifices; therefore it should be given to virtuous persons, and not to women, to the ignorant or to the vicious”—prohibiting even the gift of property to women and others, greatly depreciates the taking, directly by the widow, of the entire estate.

7. This view is not endorsed by Vijnánesvara and others; because in texts like—“The wife and the daughters also &c.”—there is no express mention of appointment, nor is it suggested by the context. Moreover, what is the cause of the widow's right to the heritage? Is it the appointment or the progeny sprung therefrom? If it be the first, then the heritage would belong to the widow who accepts the appointment although no son be born, and (even if a son be born) it would not belong to the son begotten through the appointment, for (agreeably to this alternative) right to the husband's estate arises from the appointment alone. If it be the second, then the enumeration of the wife (as an heir in the texts) would be useless, since the children's right to the heritage is established by other texts. Again, if the argument be that women may have right to property through their husband alone, and not in any other way, therefore so long as the husband is alive, they have it through him; but in order to show that when the husband is dead they may have it through the progeny, ‘the wife’ is so enumerated, which refers to a wife willing to accept the appointment. Then it is not a sound one; because it is shown by texts which

will be cited hereafter, such as,—“ What was given before the nuptial fire, what was presented in the bridal procession &c.”—that they may have right to property in other ways also. If it be said that it is only in the twofold way that her right to the husband’s property arises. In that case, the text dealing with the estate of a sonless person ought not to commence with “ the wife;” because while the husband is alive, her right to his property is established by the text of Gautama, namely,—“ Union (of the husband and the wife) arises indeed from the joining of hands (*i. e.* marriage);” and because, to say that when he is dead the right to his property arises by reason of appointment, is to affirm it only of the wife’s son, but that also has previously been declared.

Again the text of Gautama, namely,—“ Or she (may) seek to raise up offspring”—has been interpreted to mean, ‘if she seek to raise up issue,’ and has been set forth as an authority in support of the position that the wife of a sonless person may have the right of succession through appointment alone. But that is not reasonable. Because the sense of ‘if’ is not conveyed by ‘or’ that marks an alternative. Nor can it be argued that, when it becomes unreasonable to say that ‘or’ marks an alternative by reason of the dissimilarity in meaning between the succession to the estate and the desire for appointment, then inasmuch as indeclinable words convey various meanings, the particle ‘or’ may certainly be taken to convey the meaning of ‘if,’ which renders the construction of the latter part with the first part (of the text of Gautama) reasonable. Because it is certainly reasonable to say that ‘or’ marks an alternative, since it may refer to another duty suggested by the context, thus—‘or she may seek to raise issue or restrain her passions.’ Accordingly the succession to the husband’s estate, independently of the appointment, becomes affirmed by also the text of Gautama. Moreover, since the appointment of a widow is prohibited; and since by texts of Manu and others, such as—“ The sonless wife preserving unsullied the bed of her husband &c.”—it is established that a widow is entitled to the estate, provided she remain chaste; and since by the text,—“ such as are unchaste should be ex-

pelled"—even maintenance itself is disallowed to those that fail to continue in the path of duty; therefore the right (of unchaste widows) to the entire estate of the husband is certainly unreasonable.

As for the argument, namely, that from the texts of Manu and others, such as—"He who protects the estate and the wife &c."—"If a younger brother begets a son on the wife of an elder brother &c."—and—"An appointment shall not be accepted through covetousness"—it appears, by reason of co-existence and the absence of separate existence, that the widow's right to the estate of her husband whether separated or unseparated arises through progeny alone;—that is only plausible, the language of the texts does not convey the meaning deduced: the intention of the texts being that when the husband who is unseparated or re-united dies, then her right to his estate arises through progeny alone, and that the appointment should not be accepted from covetousness. Accordingly, Nárada having declared,—“The sages hold that amongst the re-united brethren however, that share (which would go to the husband on partition) she is not entitled to”—establishes mere maintenance of his childless wives. Nor can it be argued that if the text of Nárada, namely,—“Among brothers if any one die without issue &c.” (§ 5)—be thus taken to be relative to the estate of a person unseparated or re-united, then there would be tautology, for the same thing is expressed in the above text, *viz.*—“The sages hold that among unseparated brethren &c.” Because in the first text are laid down the impatibility of woman's separate property, and their maintenance which are not ordained in any other text, and the subject is introduced by that part of the text (which conveys the same meaning as the other text). As for the text of Yogisvara, namely,—“Their childless widows conducting themselves aright &c.”—that, however, will be shewn in the chapter dealing with those that are excluded from inheritance, to refer to the wives of the impotent and the like, since the pronoun ‘their’ relates to those mentioned in the previous text.

As also for the argument that the property of a twice-born has for its object the performance of sacrifices, and

that consequently it is improper that the property should be taken by a widow who is incompetent to perform sacrifices ;—that too is unreasonable, because the term ‘sacrifice’ is illustrative, it includes gifts &c., and these the widow also is competent to make ; for if the term were taken in its literal acceptance, then the property could not be used for gifts, burnt-offering and the like purposes other than sacrifices. But in reality the performance of religious rites is not the sole end of property ; for in the text,—“ Neglect not religious duty, wealth and pleasure according to ability,”—likewise in the text,—“ Let not morning, noon or evening be fruitless as regards religion, wealth and pleasure,”—it is laid down that the pursuit of wealth and pleasure, that may be made by means of wealth, is necessary. Had wealth been designed solely for sacrificial purposes, then the wearing of gold (inculcated by the Vedas) would have had the sacrificial use for its object by reason of its intimate relation with sacrifices (as supposed) ; but this would be contrary to what is concluded (in the *Mimánsá* viz., that it is intended for secular purposes. By reason of such texts as,—“ A woman is not entitled to independence”—let there be only dependence of a woman, but there can be no objection whatever to her succession to the estate. And the text—“ Property has come into existence for the purpose of sacrifices &c.”—however, is laudatory of the application of property to the performance of sacrifices. Accordingly the latter part (of the other text) is—“ to virtuous persons and not to women, to the ignorant or to the vicious.” The author of the *Mitákshará*, however, says that these texts intend that the property which was acquired by the father for the purpose of performing a sacrifice, must, even by his sons or other heirs, be appropriated to that use alone and not to any other ; for the following passage declaring it to be an offence (to act otherwise), is equally applicable to sons as well as to other heirs :—“ He, who having received articles for sacrifice, disposes not of them for that purpose, shall become a kite or a crow.”

8. Sríkara and others, however, say that the conflicting texts relate to distinct cases : if the husband’s

estate is only sufficient for the maintenance of the wife, she takes the whole of it ; but if there be a surplus, the brothers and the like take : to the very same effect is the text,—“and take the entire share ;” for maintenance must be allowed. And they assign the following reason for that conclusion, *viz.*, that by this all the texts become reconciled.

This is not consistent with reason. Because the term ‘estate’ which is mentioned but once (in the texts) is to be interpreted, when construing it with ‘the wife,’ to mean so much property as is sufficient for maintenance ; and when construing it with ‘the brothers’ or the like, to mean the unqualified estate : and this variableness in the meaning is not reasonable if uniformity is possible. And because the term ‘entire’ in Manu’s text would be meaningless. Besides it is very unreasonable to say that, when there is no son, the wife gets no more than maintenance ; for, on partition being made, whether during the lifetime of the husband or after his death, even when there are legitimate sons, the allotment to the wife of a share equal to theirs is ordained in the following texts, namely,—“ If he makes the allotments equal, his wives shall be made equal sharers,”—and—“The mother also, of those effecting partition after the demise of the father, shall get an equal share.” Nor can it be argued that in these texts too, the term ‘share’ is intended to indicate no more than what is sufficient for maintenance. Because in that case the terms ‘equal’ and ‘share’ would become meaningless. And because, if it be held that what is sufficient for maintenance, is only intended, then in the latter part also (of the text), namely,—“ If any have been assigned, let him allot the half,”—the meaning of the term ‘half’ would have to be altogether rejected. To say that what is intended is, that when the property is small a share equal to that of a son (should be given to her), and when the property is large, so much only as is sufficient for maintenance, is extremely unreasonable by reason of the variableness in the precept. Since the very same term ‘equal share’ would, having regard to some other text, signify, on one occasion when the estate is considerable, property sufficient for maintenance only ; and on another

occasion when the estate is small, its literal meaning : hence in the same precept the meaning of the sentence being different, there would be different sentences (couched in the same words) :—and this is unreasonable. There would also be the error of admitting the simultaneous exercise of the twofold power of words, namely, that of conveying a literal and a metaphorical meaning.

Just as in the topic (in the Minánsá) of the Chá-turmásya (*i. e.*, a sacrifice which takes four months for its completion, and which consists of four distinct sacrifices called the Vaisvadeva, the Varuṇapraghása, the Sákamedha and the Sunásírya ; with regard to which there is the following text of Sruti,—“Here they construct the holy fire-place, not in the Vaisvadeva nor in the Sunásírya : for the Varuṇapraghása and the Sákamedha are the principal ones of the sacrifice, as in these two they establish the sacred fire,”) the adversary says that the injunction regarding the establishment of the holy fire (ordained for the sacrifice called Darsapaurnamásiya, whereof the Chá-turmásya is a modification) is applicable also to the Chá-turmásya, as indicated by the text,—“as in these two they establish the holy fire,”—and this, he assigns, to be the reason for the prohibition of the construction of the sacred fire-place, as contained in the text,—“not in the Vaisvadeva nor in the Sunásírya,”—for otherwise the prohibition of what cannot take place would be unreasonable : thereupon it is argued on the opposite side that this is not the prohibition of the construction of the holy fire-place which is rendered applicable to the Chá-turmásya sacrifice by reason of the extension of the injunction to that effect, declared with regard to the Darsapaurnamásiya ; but this is the prohibition of the construction of the holy fire-place, as enjoined in the text in this topic, *viz.*,—“Here they construct the holy fire-place” : whereupon the adversary finds fault with the above opinion on the ground of variableness in the precept, for the text in the topic, taken together with the prohibition (in that very text) renders the construction of the holy fire-place optional, in the first and the last sacrifices, but it does independently of any other precept, render the construction of the holy fire-place obligatory in the two inter-

mediate sacrifices : for fear of this variableness in the precept it is established in the conclusion that the precept,—“not in the Vaisvadeva &c.”—is absolutely a superfluous precept, for prohibition is unreasonable, of what cannot take place in the first and the last sacrifices ; but the precept—“Here they construct the holy fire-place,”—together with the laudatory precept—“in these two they establish the holy fire”—enjoins the construction of the sacred fire-place in the two intermediate sacrifices, namely, Varuṇaspraghāsa and Sákamedhia ; but this is not in consequence of the extension to this sacrifice of an injunction declared with respect to the Darsapaurnamásiya sacrifice.

9. On this some one says :—It is declared that the brothers shall take the estate of a sonless person, and that they shall give to his wives property sufficient for their maintenance, as in the text,—“and shall allow maintenance to his wives till the end of their lives :” but when the estate is not more than what is sufficient for maintenance, or even less than that, then the question occurs whether in such a case the brothers shall take the estate or the wife ? And the text,—“The wife and the daughters also &c.”—by showing the priority of the wife’s right, indicates that in such a case, the wife alone shall take the estate. .

This too is wrong ; since in this view too, there would be the very same variableness in the precept as has previously been mentioned ; for the phrase “shall take the estate,” taken together with other texts in case the estate is small, would signify when construed with “the wife,” shall take so much property as is sufficient for maintenance ; but when construed with “the parents &c.,” shall take the entire estate.

10. If you ask, how then is the conflict to be reconciled ? Listen :—Since there is no indication of order (of succession) in the texts such as,—“The father or the brothers shall take &c.”—therefore these texts are intended only to enumerate the heirs to the estate of a sonless person : but the text of Yogísvara which lays down,—“In the absence of the preceding one, every succeeding one is heir to the estate”—is relative to the order of succession :

therefore although in the other texts there is no mention of the wife and the rest in a settled order, still there being no conflict in meaning (between these two sets of texts), the father and the rest become heirs to the estate of a sonless person in default of the wife and the like.

The succession, however, of a wife that is suspected of adultery, is forbidden by Hárīta,—“If a woman becoming widow in her youth be headstrong, a maintenance must in that case be allowed to her for the support of life.” From this very text it appears that the widow who is not suspected of unchastity, is entitled to take the entire estate of the husband. Accordingly it is said in the text of Sankha,—“or the senior wife:” ‘senior’ means praiseworthy for good qualities, but not the eldest in age. Manu also declares seniority in the order of the classes,—“When regenerate men espouse wives of the same class as well as of a different class, the seniority, honor and habitation of those wives must be settled according to the order of the classes.” Hence a wife of the same class, although youngest in age and in respect of the date of marriage, is senior to one of a different class; also among those of the same class, the senior is one possessed of good qualities. Accordingly Manu says,—“To all such married men, the wives of the same class, and not the wives of a different class on any account, shall perform the duty of personal attendance, and the daily business relating to acts of religion: for he who foolishly causes those duties to be performed by any other than his wife of the same class when she is near at hand, has been immemorially considered as a Chandálá though by birth a Bráhmaṇa.” Also Yogísvara says,—“Among wives of the same class, one other than the eldest should not be employed in the performance of religious duties.” Also, a wife of the same class is indicated by the term *patni* itself, which signifies union through a sacrifice. But in the absence of a wife of the same class, a wife belonging to the class next in order, (may be employed in the performance of such duties): accordingly Vishnu says,—“If there be no wife belonging to the same class, then under the exceptional circumstance, a wife belonging to the class next in order (may be employed); but never (should) a regenerate man (perform)

religious duties, with a wife of the Súdra class :”—the term “should perform” occurring in the previous text is to be construed with this text. Hence in default of a Bráhmaṇi wife, a Kshatriya wife may be the companion of a Bráhmaṇa under that unavoidable circumstance ; but neither a Vaisya nor a Súdra woman though espoused : a Vaisya wife alone may become the associate of the Kshatriya husband in default of a Kshatriya wife : a Vaisya may not have a Súdra wife (for his companion in the performance of religious duties) but must have one of the same class ; for a Súdra wife is altogether excluded.

Accordingly a wife who is not suspected of unchastity, and who is of the superior class, shall take the husband’s estate, and maintain her co-wives of the inferior classes. But the wives of the same class with the husband shall take the estate dividing it amongst themselves. Hence the singular number in the term ‘wife’ is to be taken to be used with the intention of designating the class.

Hence the chaste wife of a sonless deceased person who was separated and not re-united, is entitled to take the entire estate : but of a sonless person who was unseparated or re-united, even the chaste wife is entitled to mere subsistence, by reason of the texts of Nárada and others, such as,—“ If any one among brothers die without issue &c.” An unchaste widow, however, is not entitled even to maintenance, for it is declared,—“ But if she behave otherwise, they may resume the allowance.”

As for the allowance of food and raiment even to the unchaste wives, as is declared in the following text, namely,—“ Also let one act in the same manner towards even the fallen wives ; food and raiment, however, should be allowed to them, if they reside in the vicinity of the dwelling house :”—that however is to be explained as referring to the husband, consistently with what is ordained by Yogisvara after having premised the husband, as in the text,—“ Deprived of her position in the family, clad in dirty clothes, living upon morsels barely sufficient for life, and humiliated, an unchaste wife shall be made to lie down upon the bare earth.” This too is to continue till the penance be performed. The banishment by also the husband, and the like mode of expiation for those women

that do not out of perverseness perform the penance, will subsequently be considered by us.

The text, namely,—“The wife and the daughters also &c.”—is relative to the estate of one who was separated and not re-united; for partition (of a joint family) has previously been treated, and partition after re-union, has by way of an exception to all other cases, been subsequently dealt with, (by Yájnavalkya), consequently this is the only case which remains to be discussed. This is the opinion of most commentators, namely, Vijnánesvara, Lakshmídhará, the author of the Smritichandriká, Visvarúpa, Medhátithi, the author of the Madanaratna, &c.

11. The term ‘sonless’ used in the texts (on succession) such as,—“The wife and the daughters also &c.”—indicates the default of the grandson and the great-grandson also. The succession of the wife is proper only in default of male issue down to the great-grandson. For the duty of the grandsons too, to pay off the debts is declared in the text,—“The debts ought to be liquidated by the sons and grandsons (*puttra-pauttrais*) ;” but if any one else were to take the estate in spite of the grandson, then the declaration of the grandson’s liability to discharge the debts would be unreasonable; since by reason of the text,—“The heir to the estate of a person shall be compelled to liquidate his debts,”—he alone who takes the estate is declared liable to discharge the debts. If it be argued that the grandson is included under the term ‘gentiles,’ and as such may take the estate: then, in that case, there would be no use for the special provision regarding the grandson’s liability to discharge the debts; since it would follow from the text alone, viz.—“The heir to the estate of a person shall be compelled to liquidate his debts.” If it be said that the grandsons are liable, in the same way as sons, to liquidate the debts, although they do not get the grandfather’s estate. Then *a fortiori* it follows that when property is left by the grandfather, the right of any other than the grandson ought not to take place. The very same reason applies to the great-grandson also. Hence it is that the compound term *puttra-pauttrais* (rendered above into, by the sons and grandsons) bears the

plural number : otherwise the dual number would have been used, or it would have to be assumed that the plural number is used in order to denote individuals. Thus the meaning is this :—the term *putra-pauttra* may be taken to be a compound of *putra* and *pauttra* and *putra's pauttra* ; and the plural number is accounted for by taking the term *putra-pauttrais* to be the result of the uni-residual conjunctive compound of two similar terms, namely, *putra-pauttrau* (bearing a dual number and signifying the sons and the grandsons) and *putra-pauttra* (bearing a singular number and signifying the great-grandson) ; that is to say, by the sons, grandsons and great-grandsons : or the term grandson may include the great-grandson. Accordingly the different sorts of provisions for the liquidation of the debts by the great-grandsons as distinguished from the same by the grandsons, and by the grandsons as distinguished from the same by the sons,—become consistent with reason. Otherwise there would arise the objection of assuming a peculiar provision so far as regards the great-grandsons.

Again, it is clear that the three descendants equally confer spiritual benefit by offering oblations in the *parva* occasions. Accordingly Manu says,—“To three (ancestors) must libations of water be given ; for three, is the funeral oblation of food ordained : the fourth is the giver of these ; the fifth has no concern in them.” Also Bauḍhayana having premised son, grandson and great-grandson, says,—“The great-grandfather, the grandfather, the father, the man himself, the uterine brothers, the son begotten by a wife of the same class, the grandson and the great-grandson : these, partaking of undivided oblations, are called *sapindas*. Those who partake of divided oblations are called *sakulyas*. When there is male issue of the body, the estate must go to him.”—The meaning of this text is as follows :—Since a person (when deceased) partakes of the oblations presented to the three paternal ancestors beginning with the father, by reason of the union of oblations (effected through the ceremony called *sapindikarav*) ; and since the three descendants in the male line beginning with the son present oblations to that person himself ; and since he, who while living offered oblations to an ancestor

in the male line, partakes when dead, of the oblations presented to that ancestor, by reason of the union of oblations : thus the middlemost person who while living offered oblations to his ancestors, and when dead partakes of the oblations presented to them, becomes the object to whom oblations are presented by others that are living, and partakes with these latter while they are dead, of oblations presented (to him) by the daughter's son and the like. Therefore those to whom that person offers oblations, as well as those who partake of the oblations presented by him, as also those who present oblations to him, are, as partaking of undivided oblations consisting of the *pinda*, the *sapindus* of that person by reason of connection through the same *pinda*. To an ancestor who is fifth in ascent, the middlemost person who is fifth in descent, does not present oblations, nor does he partake of oblations presented to that ancestor ; similarly the fifth descendant does not confer oblations on the middlemost person, nor partakes of oblations presented to him. Consequently the three ancestors beginning with the great-great-grandfather and the three descendants beginning with the great-great-grandson, that is, the three beginning with the fifth on both sides, who partake of divided oblations, and are not connected through the same *pinda*, are by the sage called *sakulyas*, inasmuch as they are only connected through the *kula* or family.

This *sapinda* and *sakulya* relationship is declared with reference to succession, as it is mentioned in the chapter relating to that subject. But with reference to impurity, marriage &c., those also that partake of the divided oblations (*i. e.* the *sakulyas*) are considered as *sapindas*, by reason of the text,—“The fourth and the other ancestors who partake of the *lepa* or divided oblations, and the father and the like to whom the *pinda* or oblation is offered (are *sapindus*) ; to these the seventh offers oblations, hence *sapinda* relationship extends to seven generations.” And the text,—“The *sapinda* relationship, however, ceases in the seventh generation”—is to be explained consistently with the text of Yájnavalkya, namely,—“After the fifth and the seventh from the mother and the father (respectively)—to mean that it remains in the seventh but ceases

in the eighth generation. Hence as in the case of the unmarried females, the *sapinda* relationship extending over three generations, as is declared in the chapter on impurity (occasioned by death &c),—is considered to be with reference to that alone ; so it is to be deemed that this *sapinda* relationship (extending to the fourth degree) is relative to succession alone.

Kátyáyana, however, distinctly declares the succession of the son, grandson and great-grandson, as in the text,—“ When a son dies unseparated, his son who has not received maintenance from the grandfather, shall be made participator of the heritage ; he is to get, however, the paternal share from the uncle or uncle’s son : the very same share shall equitably belong to all the brothers : or his son also shall get : afterwards cessation (of succession) takes place.” But it is to be borne in mind that the cessation of the right of the great-great-grandson and the like who are further removed than the great-grandson,—as mentioned in this text, refers to them as *sapindas* ; for as *sakulyas* they are certainly entitled to succeed according to proximity.

As for the text, namely,—“ If among uterine brothers, one becomes father of a son &c.”—that, however, refers to the performance of a son’s duties such as the *sráddha* but not to the taking of heritage, and that lays down the restriction, namely, that when a brother’s son is available for taking in adoption none else should be made a subsidiary son : otherwise the mention of the brother’s son after the brother, in the text enumerating the heirs to the estate of a sonless person and laying down the order of succession, would become inconsistent.

The three descendants beginning with the son confer the greatest amount of spiritual benefit on the three ancestors beginning with the father, consequently the estate conducing as it does to the benefit of the owner himself when taken by the sons &c. continues, as it were, the owner’s own by reason of the proximity of benefit. And the nearness on account of the spiritual benefit is consistent with reason : thus it is ordained,—“ As soon as the eldest son is born, a man becomes father of male issue and is liberated from the debt he owes to his ancestors ; therefore

he (the eldest son) is entitled to get."—Since, in the chapter on Partition of Heritage, the conferring of spiritual benefit is by the term 'therefore' set out as the reason; hence it is indicated that he alone is entitled to get the estate, on whom the estate being devolved conduces to the greatest amount of spiritual benefit of the deceased owner, and that proximity in this way is to be accepted as a general rule and reasonable.

That the son and other descendants confer the greatest amount of spiritual benefit is set forth in many passages of the Sruti, the Smriti, and the Puráñas. On this subject there is the following Sruti:—In the anecdote of Harischandra in the Bahvrichabrahmána it is said that Nárada being asked by Harischandra thus,—“Explain to me, O Nárada! what is attained by a son, for those that are learned as well as those that are not, are solicitous for sons,”—enlightened him by ten verses delineating the importance of a son: he being asked in one verse answered in ten, thus,—“If the father sees the face of his living son after it is born, he transfers his debts to it and attains immortality &c.” The following passages of the Smriti are to the same effect. Manu and Vishnu say,—“Since a son delivers the father from the infernal region called *put*, therefore he is named the *put-tra* (the deliverer from the *put*) by the self-existing himself.” Sankha and Likhita say,—“Seeing the face of a son in his lifetime, the father becomes liberated from his debt to the ancestors, and becomes entitled to go to heaven by means of the son born, after transferring that debt to him. The sacred fire, the three Vedas, and all the sacrifices with fees to the priests, are not equivalent even to a sixteenth part of the eldest son born.” Manu, Likhita, Vasishtha and Háríta say,—“By means of a son one attains the heavenly regions, by a grandson acquires immortality, and by a son's grandson attains the solar region.” Yájnavalkya declares, —“As the blissful regions and the heaven are attained by means of sons, grandsons and great-grandsons, therefore wives should be taken and guarded well.” In the Puráñas, again, there are many anecdotes laudatory of the son &c.

Hence it is established that it is only in default of male issue down to the great-grandson that the wife takes

the estate of the husband who was separated and not re-united.

12. Jímútaváhana maintains that the above reconciliation is not tenable by reason of conflict with the text of Vrihaspati. Thus he says:—‘In the text,—‘ When brothers who have been separated dwell together through affection, then in the re-distribution among these there is no specific deduction for seniority : if any one of them dies or anyhow retires, his share is not extinguished but belongs to his brother ; if there be any sister, she is entitled to obtain a share of it : this is the law regarding the estate of a childless person who is destitute of the wife and the father : of the re-united, however, if any one acquires wealth by science, valour and the like ; two shares are to be allotted to him, and the rest are equal sharers’—re-union is mentioned in the commencement as well as in the concluding portion ; therefore it must be admitted that the intermediate portion, namely,—‘ his share is not extinguished but belongs to his brother’—refers to the case of re-union : also it is declared that, ‘this is the law, regarding the estate of a childless person who is destitute of the wife and the father ; hence it appears that the right of the re-united uterine brother takes effect in default of son, daughter, wife and father ; how then can a brother debar the wife ? Moreover the portion, namely, ‘his share is not extinguished,’ becomes reasonable, if the brother was unseparated or re-united, as there might be an apprehension of the extinction of his share by reason of the mixture ; but if the brother was separated and not re-united then his estate being separate, there cannot be any apprehension of extinction : from this reason as also from indication it appears that the above text refers to a case of re-union.

“Moreover, is it by reason of any other clear text or by reason of any strong argument that the texts of Sankha and other sages, which indicate the right of the brothers to be preferable to that of the wife, are maintained to refer to the estate of one who was unseparated or re-united ? The first is not tenable, by reason of the absence of any clear special text. The text, however, which will be cited hereafter, namely—‘ Of a re-united (co-heir), however, a

reunited (co heir)—lays down a special rule when the succession opens to brothers ; it does not convey the contended meaning. The text of Vrihaspati, however, indicating as it does the succession of a re-united uterine brother in default of those beginning with the son and ending in the father, rather shows that the texts in question are relative to the estate of one who was not re-united. Neither is the second tenable. For argument (if any) must be said to be this : in a family joint or re-united, whatever property belongs to one member belongs also to others ; therefore although the right therein of a deceased member is extinguished, the right of the survivors subsists therein ; hence the devolution on them is reasonable, but not the supposition of any other heir. But this is not consistent with reason. For even when the family is joint or re-united, the right of each member extends to a fractional portion though unascertained ; but neither an exclusive right of each nor a joint right of all the members together extends to the entire property, as in that case there would be multiplicity in assuming many times the accrual and extinction of right.

Moreover, from the previously cited texts of Gautama and others, such as,—“ Union (of husband and wife) arises indeed from marriage,”—it appears that the wife’s right to the property of the husband arises from marriage : but there is no authority for assuming that that right ceases on the death of the husband if he was unseparated or re-united, and that it does not cease in other cases. When there are sons &c , then it is only on the authority of the texts propounding their right that the extinction of the wife’s right is assumed. It cannot, however, be contended, that in this case too, the extinction of the wife’s right is to be assumed by reason of the texts laying down the right of a re-united or unseparated brother. Because any text to that effect is not met with ; and because it cannot be ascertained by reason of the fallacy of mutual dependence ; for if it be established that the wife’s right is extinguished on the death of the husband who was re-united or unseparated, then the texts laying down the right of the brother may be held to be relative to that case ; again if it be established that the texts laying down the

right of the brother is relative to that case, then the extinction of the wife's right may be assumed. Hence it is that in the texts of Yogisvara, Vishnu and others, only the default of sons is mentioned, but not separation nor the absence of re-union. It cannot be argued that these are, by implication, enumerated, inasmuch as partition has previously been mentioned and re-union has subsequently been treated of; for if that were so, then the term 'sonless' also need not be set out, since when the primary and the secondary sons have been separately mentioned to be heirs, then also it may appear by implication that the text is relative to a different state of things. The term 'sonless' may become significant by interpreting it to indicate the following restriction, namely, that these alone are, in this very order, heirs to a sonless person: and this interpretation is equally applicable to the other two cases (namely, jointness, or re-union). But it does by no means follow that the text is relative to the case of separation. It has already been said that the text regarding re-union is intended for laying down a special rule when the right of the brother takes effect, and not for excluding the wife and the like.

" Besides, if the texts of Sankha, Likhita, and others related to a brother who was joint or re-united, then what is the meaning of this, *viz.*, that the estate of such a sonless person devolves on a brother of that description, and in his default the parents shall take? Then again the question arises, whether the parents who have been separated and not re-united, or who are joint or re-united shall take? The first alternative is not tenable; for such parents are debarred by the wife, how then in default of brothers, can their right be signified in preference to the wife? Neither is the second alternative tenable; for the text would be useless, since no one disputes that the parents who are joint or re-united are entitled to take. Moreover, as in the case of the estate of one who was separated and not re-united with the father or the brothers, the father succeeds in preference to the brothers,—by reason of his being the author of (the deceased son's) existence, by reason of the declaration of identity (of father and son) as in the text,—'A man himself indeed is born as the son, the son is the same as the father himself,' by reason of the authority.

of the father over the person and property of the son, by reason of the deceased son's participation, through the union of oblations effected by the ceremony of *sapindikarana*, in the two oblations presented by the father to the grandfather and the great-grandfather, and by reason of the incompetency of the sons to present oblations in the *parva* occasions while the father is alive;—so it is reasonable that he should succeed in other cases. Or there being no distinction between jointness and re-union, the co-equal right (of the father and the brothers) is reasonable, but it is not reasonable to say that the father's right takes effect on failure of the brothers.

"Moreover, the adjectives 'unseparated' and 're-united' cannot properly be applied to (both) the parents, for there cannot be partition with the mother, and so the adjective 'unseparated' (as applied to the mother) would be meaningless. Hence it follows that there can neither be re-union (with the mother), for it must be preceded by partition. Accordingly Vihaspati says.—'He who having been separated dwell together again through affection with the father, brother or the paternal uncle is called re-united with him.' From this text it appears that the father, brother and the paternal uncle who are from their birth likely to be united as regards the property acquired by the father and the grandfather, they alone may become re-united when having been once separated they annul through mutual affection the previous partition with an agreement to the effect that the wealth which is mine is thine and what is thine is mine, and remain as one householder as before in commensality and undivided (in any transaction). Those, however, who are unlike these are not to be considered re-united by reason of the mere union of property: for if that were so, then the term re-union would be applicable to a joint stock company of traders. Accordingly the term re-union is not applied to brethren who manage their estates holding them joint for the sake of convenience, but are without the stipulation based upon affection. Hence it becomes difficult (for the adversary) to maintain the mother's right of succession in spite of the brother.

"Hence it is perfectly consistent to hold that in de-

fault of descendants down to the great grandson, the widow alone does without distinction succeed to the entire estate of her deceased sonless husband. But it is not reasonable to assume what is not specified in any text, namely, that the wife succeeds if the husband was separated and not re-united. Jitendriya and others also support the same view. In default of descendants down to the great grandson, she too confers a great amount of spiritual benefit upon the husband by performing the *sraaddha* and the like. This appears from the following text of Manu, viz.,—‘The wife alone shall offer oblations to him and take his entire estate.’ Vyāsa also declares,—‘When the husband is dead, a chaste wife leading a life of austerities and performing daily oblations shall respectfully offer handfuls of water to her husband and shall day by day worship the gods and entertain the guests; also being devoted shall daily worship Vishnu, shall present gifts to worthiest Brāhmaṇas for the purpose of augmenting religious merit; and shall, oh auspicious! observe the various kinds of fasting enjoined by the Sāstras: oh sweet-faced! the wife who is constantly devoted to a religious life saves both herself and her husband abiding in the other world.’—Hence, because the wife also saves the husband from the infernal regions, and because by leading a vicious life through indigence (the wife who is) half the body of the husband by reason of the declaration to that effect, causes the husband also to fall, for the same is indicated in texts like the following,—‘whose wife drinks wine &c.’—therefore the estate being taken by her becomes beneficial to the husband; consequently the wife’s succession to the husband’s estate in preference to all others is consistent with reason.

“ The construction to be put upon the texts of Sankha and other sages is, however, far-fetched :—The estate of a person who is deceased and sonless, *i. e.*, destitute of male issue down to the great-grandson, let the eldest wife, *i. e.*, the wife that is preferable, take; in her default and in default of the daughter and the daughter’s son, let the parents take; in their default it goes to the brothers: the term *tadabhāve* (in his, her or their default) occurring in the middle (of the text of Sankha and others) may be con-

strued with what precedes or with what follows, for such a construction is not incorrect, and the reason for it has previously been mentioned. The text of Nárada, namely,—‘If any one of the brothers die without issue &c.’—and other texts to the same effect are relative to a wedded wife other than a *patni*; since in these texts the term *stri* is used, whereas in the text of Sankha and others, the term *patni* is used. And it has been previously shewn that all married women do not acquire the status of the *patni*. Accordingly in another text of Nárada himself, namely,—‘But the king adhering to his duties shall (take the estate and) allow maintenance to his *stri*s; this is pronounced the law of inheritance excepting in the case of Bráhmaṇas,’—it appears from the use of the term *stri* that maintenance only is to be allowed to the wives of a person other than a Bráhmaṇa, who do not hold the rank of the *patni*. But the wives of a person other than a Bráhmaṇa, who hold the rank of the *patni* are entitled to take the entire estate of the husband. Thus Vrihaspati says, —‘The estate of the Kshatriyas, Vaisyas and Súdras who are sonless and destitute of the *patni* and brothers, the king shall take, for he is the lord of all.’—The term ‘destitute of the *patni* and brothers’ indicates the failure of all the heirs down to the fellow-student; because the order of their succession being settled, the king cannot intervene between them, and because in the previously cited text, Vishnu having mentioned the heirs down to the fellow-student, says,—‘in their default it goes to the king excepting the property of a Bráhmaṇa.’”

13. As to the above view (of Jímútaváhana) what is to be remarked is this. What is the objection to the reconciliation, namely, that the texts of Nárada Sankha and others are relative to jointness or re-union? Is it in conflict with any reason, or is it in conflict with any text? There is not, however, conflict with any reason, for there is not any reason against it. But rather there is a reason in support of it. Since when the husband dies unseparated, he had no (specific) share at all, then what will the wife take? And if re-united, then although his share had been specified, it was lost by reason of the accrual of a com-

mon right over again. Nor can it be argued that there is certainly his undefined share although it is the subject of a common right. For although this be admitted, still on the demise of one by whose relation the right became common, the succession of him alone whose right subsists is proper, but not the supposition of the accrual of another's right. If it be said that, by reason of the text of Gautama, viz.,—"From marriage indeed arises union as regards religious acts, their fruit and the acceptance of chattels"—the wife's right accrues to the husband's share though undefined, wherefore then is the extinction of that right assumed while she is alive? The answer is:—Her right is only fictional but not a real one: the wife's right to the husband's property, which to all appearance seems to be the same (as the husband's right) like a mixture of milk and water, is suitable to the performance of acts which are to be jointly performed, but it is not mutual like that of the brothers; hence it is that there may be separation of brothers, but not of the husband and wife; on this reason is founded the text, namely,—“Partition cannot take place between the husband and wife; therefore it cannot but be admitted that on the extinction of the husband's right the extinction of the wife's right is necessary: hence it is to be assumed (by you) either that the wife's right accrues to the property of the husband who was joint or re-united (on his demise), or that the existing right of a co-sharer who is joint or re-united is not common; the latter alternative alone cannot but be admitted (by you) by reason of simplicity. Nor can the wife herself be a party to partition, as there is no authority establishing the same. Nor can it be said that these very texts (which lay down the wife's succession) establish it. Because it is not settled as to what case these texts are applicable, and because these may as well be taken to refer to the estate of one who was separated and not re-united. Accordingly the fallacy of mutual dependence (mentioned by Jímútaváhana, p. 160) is out of the question. Since the fallacy cannot interrupt the enquiry (into the subject to which the texts are applicable); and since when the enquiry is over, the subject to which the texts are applicable has already been determined.

As for what has been said in the passage, namely,—“For even when the family is joint or re-united &c.” (p. 160); that is not capable of weakening our contention. For even if the right of each member be admitted to extend to a fractional portion though unascertained, still it is established by a different reason, that the texts (laying down the wife's succession) cannot refer to a case of re-union. Nor can it be argued that there is no authority for holding that the texts, such as,—“The wife and the daughters &c.”—refer to the estate of one who was separated and not re-united, while there is nothing to that effect in the texts themselves. Because there being no other reasonable reconciliation of the conflicting texts of Náraḍa and others, the inference of a meaning, which is based upon the reason which has previously been set forth is itself the authority. And it will subsequently be stated that no other reconciliation is reasonable.

Nor can it be argued that just as (you say that) there are no terms used in the text itself to show that it is relative to the estate of a person separated and not re-united, because it appears by implication that the text,—“The wife and the daughters &c.”—refers to that case by reason of partition having previously been dealt with, and by reason of re-union having been subsequently treated of: that therefore for the same reason the term ‘sonless’ also ought not to have been mentioned (in the text), because the text,—“The wife and the daughters &c.”—being set about after having discussed the subject of partition between the primary and subsidiary sons, it would have appeared, (by implication) that the text refers to the estate of a sonless person. Because the term (‘sonless’) is used for the purpose of indicating a meaning which has not been expressed by Yogiśvara in any other text, but which meaning is mentioned in other Institutes by texts like—“The *avrasa* or legitimate son alone is the master of the paternal wealth,”—and—“Not brothers nor parents but the sons are entitled to the property of the father.” Otherwise there might be a doubt that as on partition during the father's lifetime or after his demise, his wives are entitled to shares even when there are sons, so the same would be the case in this instance too. If it be said

that there is no occasion for such a doubt, the text being declared after the subject of partition amongst sons has been finished ; then in other Institutes the declaration of separate texts, such as,—“The *aurasa* or legitimate son alone is the master of the paternal wealth,”—and—“Not brothers nor parents but sons are entitled to the paternal wealth,”—for establishing the absence of the right of the wife and the rest when there are the legitimate and subsidiary sons,—would be altogether useless. And the ground on which this objection may be removed (by you), namely,—that in the Institutes of law, a proposition though it may be deduced by means of the rules of interpretation is still for the purpose of clearness separately enunciated,—may with greater reason be applicable to a single term (viz. ‘sonless’). If it be said that wherefore have not the terms ‘separated’ and ‘not re-united’ also been for the sake of clearness inserted (in the text of Yájnavalkya to qualify the ‘sonless person’) ? The answer is, because the sages had their own independent will. Besides, agreeably to the maxim that when there is an effect (in the shape of erroneous knowledge) its reason is investigated,—where there is a separate text of law embodying a meaning which is deducible by the rules of interpretation (from other texts) then, because what is so deducible ought to be maintained, therefore it is said that the separate text is intended to elucidate the same so that the text may not be considered useless.

As for what has been said, namely, that the text,—“Of a re-united (co-heir), however, a re-united (co-heir)” —is intended to lay down a special rule when the succession opens to brothers, and not to exclude the wife &c.;—that too is erroneous; for it is opposed to the term ‘however;’ and because in that part of the Institutes (of Yájnavalkya) each succeeding text is put by way of exception to what has previously been laid down; hence the term ‘however’ has been inserted in every text, and the text—“An impotent &c.”—(which succeeds the above text) is declared embodying an exceptional rule for excluding, by reason of impotence and the like, from inheritance all the sons and the rest who have previously been declared to be heirs. Accordingly, in the Mitákshará these texts have been introduced and explained in this way by Vijnánesvara.

In the passage “Besides &c.” (p. 161)—the right of the parents in default of brothers, as laid down in the text of Sankha and Likhita has been refuted (by Jímútavahana) having put his argument in an alternative form. That too is very weak; for our view cannot be questioned in that way, inasmuch as, like you, we can as well by reversing the order explain that text to be relative to parents who are separated and not re-united.

As for what has been said (p. 161) in the passage “Moreover &c.”; that is to be passed by, as being of the same kind with the preceding.

As also for what has been said (p. 162) in the passage “moreover &c.”;—that too is not a valid objection, because although the adjectives (unseparated and re-united) be not applicable to the mother (included under the term ‘parents’) still they may properly be construed with the father (comprised by the same term). But in reality, though directly there can be no partition with the mother, still re-union (of the mother), preceded by the particular stipulation based upon affection, may take place with sons, since she too may get a share by the choice of the father at a partition during his lifetime, and since participation (of a share) by her at a partition after the demise of the father is distinctly declared. Nor can it be argued that this is contrary to the text of Vrihaspati, namely,—“He who having been separated &c.”; that hence it is said by the author of the Mitákshará that re-union does not take place with any person indifferently, but with the father, brother or uncle, and the above text is cited by him in support of this view. Because, if that were so, then re-union with the daughter’s son and the like, which is recognised by the practice of all people, would become improper. Therefore of those only amongst whom there may be mutual partition, the mutual union preceded by it (partition), and based upon the particular stipulation, is re-union, and not by the mere mixture of each other’s property as in the case of traders. This is what is intended by the text of Vrihaspati, but not the exclusion of the mother and the like. For if the exclusion of the mother &c. were the purport of the text of Vrihaspati, then the objection would arise that the text embodies a prohibition

in the shape of an injunction, which is liable to three exceptions. It is for this reason that the particle 'or' is repeated in the text of Vrihaspati to show that no value is to be attached to the enumeration. So in the Ratnákara, Chandesvara says,—The particle 'or' shows that no importance is to be attached to the enumeration; hence we get what is recognised by all people, namely, the re-union of one dwelling together after partition with the paternal uncle's son who was a co-sharer (before partition). Also Váchaspati says to the same effect. As for what he (Váchaspati) says, namely, that re-union is, by reason of simplicity, defined to be only the union together of those who had separate properties; the fact of there having been previous partition is not the condition of it nor is mutual assent its foundation:—that is not tenable; because it is opposed to the term 'again'; and because the term re-union would be applicable even to partition, for if right by birth be not admitted, then on (the occasion of) partition there is union of those having distinct properties: otherwise, if it be said that both (the definitions) being deducible from the text, the one maintained by the other side is equally valid, then it would exclude the re-union with an ascendant such as the father, although such re-union is recognised by all people. Also the author of the Mitáksará by saying "not with any person indifferently," intends not to exclude the mother and the like, but only to lay down the restriction, that re-union must be preceded by partition and based upon the particular stipulation, and so to exclude the union consisting in the mixture of chattels in any way.

As for what you have said, namely, that the object of the text, viz.,—"Of the re-united (co-heir), however, a re-united (co-heir) &c."—is to provide for special rules governed by the circumstance of re-union, the fact of being uterine, and so forth,—(rules) which are to apply when the succession opens to the brothers:—that, however, is very unreasonable; since there is no reason why that text should not be applicable to other gentiles such as the father. And this will be discussed at length where that subject (re-union) itself is dealt with.

Hence there is no defect (attributable to the reconciliation made by us) in the shape of a conflict with any reason.

Nor can it be argued that there is a conflict with the text, on the ground that when he (Vrihaspati) has (in his text p. 159) qualified the re-united person also by the adjective "devoid of the wife and the father," then it follows that the right (of a brother) to the estate of re-united brothers takes effect only in default of the wife and the father, in the same way as in default of male issue. Because the succession of the wife to the estate of her re-united husband is expressly forbidden by Nárada in the text,—“The sages hold that amongst the re-united brethren, however, that share (which would go to the husband on partition) she is not entitled to.” Also in the reading of this text, as adopted in the Kalpataru, namely,—“The share of one of the re-united brethren, however, is ordained to be theirs alone”—the exclusion of the wife and the like certainly follows from the term ‘alone.’ Nor can it be argued that if the text of Nárada, namely,—“Among brothers if any one die &c.” (p. 142)—be, by virtue of the context, interpreted to refer to a case of re-union, then there would be tautology, since the same thing is expressed in the text,—“The sages hold &c.”; hence, because the term ‘*stri*’ is used in this text (of Nárada) and the term ‘*patni*’ is used in other texts (which lay down the succession of the wife in preference to the brothers &c.), therefore the reconciliation which alone is preferable is that the latter texts refer to the *patni* or the lawfully wedded wife, (and the previous text of Nárada, to other wives). Because the objection of tautology is of no effect, for what are intended to be laid down (in the first text of Nárada) are only the impartibility of the wives’ peculiar property and their maintenance, and this subject is introduced by repeating what has been previously ordained (in the second text); and because it would be unreasonable to prohibit the succession of the other wives to the estate of their husband, as their succession cannot follow from texts like,—“The wife and the daughters &c.”—in which the term *patni* is used. Again, agreeably to your opinion, the term ‘through covetousness for the heritage’ in Vasishtha’s text, which qualifies

the term ‘appointment’ would become unaccountable; for if the wife be first of all entitled to take the estate of the husband, who is destitute of male issue, without distinction arising from jointness separation or re-union, then how can there be the acceptance by the wife of appointment through covetousness for heritage, that it is prohibited? Agreeably to our opinion, however, by virtue of the texts of Náraṇa and others, the wife has no concern with the estate of the sonless husband while there is a brother joint or re-united, but her right may arise through a son alone, hence the acceptance of appointment through covetousness of inheritance may take place, and so it is prohibited. Nor can it be argued that inasmuch as in your opinion a wife other than a *patni* is not entitled to the inheritance, her acceptance of the appointment, proceeding from covetousness of wealth is prohibited, and not what we say might have happened (but for the prohibition); Because the *patni* alone being premised there, it would be unreasonable to say that it refers to a wife other than the *patni*. Accordingly Dháresvara and others have set forth this very text of Vasishṭha as an authority for holding that the text,—“The wife and the daughters &c.”—refers to a *patni* willing to accept the appointment. Hence, there is the prohibition of the wife’s succession to the estate of the re-united husband, by virtue of the texts of Náraṇa and Vasishṭha; there is, again, the prohibition of even the uterine brother’s succession to the estate of a re-united brother, when there is the wife, by reason of the declaration in the text of Vrihaspati namely,—“This is the law regarding the estate of a person who is childless and destitute of the wife and the father:” this conflict which necessarily arises, and ought to be any how got rid of by referring the texts to distinct cases, but which has not been got rid of by others, is thus reconciled,—Although it would follow, regard being had to the subject treated in the context, that the term ‘re-united person’ is to be supplied as the substantive to which the adjective ‘destitute of the wife and the father’ relates, still it is opposed by the necessity of the adjective referring to one not re-united, by reason of the contradictory texts of Náraṇa and others; because the context cannot lead to a conflict of precepts.

Nor can it be said that since the pronoun 'this' relates to the law of succession to the property of a re-united person, with regard to which a particular rule is laid down in this part of the text, (viz. "This is the law &c."), therefore the adjective 'destitute of the wife and the father,' like the adjective 'childless' qualifies the re-united deceased (co-sharer); that hence the conflict is not between the precept and the context, but between the two precepts. Because, though the pronoun relates to the succession to the estate of a re-united (co-sharer,) still (the meaning may be taken to be) 'this' same law of succession, which obtains with regard to the estate of a re-united co-sharer, is applicable even to the estate of one not re-united who is destitute of issue, and has not the wife or the father surviving him, (that is to say) let not a uterine brother, however, take the estate of a deceased childless brother, who was separated and not re-united, when there is the wife or the father, but let the wife or the father take : the proposition may be reasonably explained in this way. Thus the word *cha* also is to be explained as suggesting that the term 'not re-united' which is not expressed is understood. Hence also, if the subject be taken to be disjoined by this proposition relative to the estate of a brother not re-united, then also the use of the term 're-united' becomes significant, in the succeeding text, namely,—"Of the re-united, however, if any one &c."; otherwise it would be useless, for the same meaning would appear here too from the context. Accordingly in the third chapter (of the *Mimánsá*) it has been held while dealing with the topic of the *nivids* (or invocations of gods at the time of offering sacrifices to them) that the putting-on of the upper garment (which is subsequently enjoined) is not subservient to the chanting of the hymns for kindling the holy fire, by reason of the topic of these hymns, which is separated (from the topic in which the putting-on of the upper garment is enjoined) by the different topic of the *nivids*,—forming a minor topic; but is subservient to the whole sacrifice of *Darsapurnamása* which is the comprehensive topic (and includes the minor ones) : and it is maintained by Bhatta that the subsequent attributes (of the hymns,

called *kámyas*) are enjoined by repeating the hymns for kindling the holy fire, on account of their distance, in the same way as the twelve propitiating hymns. But in reality, the succession of the sister, in default of a uterine brother, to the estate of a re-united brother, is indicated by the text,—“if there be any sister &c.”,—and this alone which immediately precedes is referred to by the pronoun ‘this’ occurring in the sentence “this is the law &c.”: and in this interpretation there is no conflict whatever. It has been so explained in the *Chandriká* also.

The succession, however, of the widow to the entire estate belonging to her sonless husband who was unseparated is opposed to what is declared by *Katyáyana*; for he says,—“But when the husband dies unseparated, the wife is entitled to food and raiment; or (*tu*) she gets a portion of the estate till her death.”—The particle *tu* bears the sense of ‘or’; hence the meaning is this:—Either she may directly receive food and raiment, or till her death, i. e. during her life, she may get so much share of the property as is sufficient for her maintenance and for the performance of necessary religious ceremonies which a woman is competent to perform. By reason of the declaration “a portion of the estate till her death,” the position that the widow gets the entire estate of the unseparated husband, fails. Nor can it be argued from the use of the term *strī* (in the above text), that this text refers to a wife other than a *patni*. Because the adjective ‘unseparated’ would be meaningless; and because it is ordained that a sonless wife other than a *patni* is entitled only to maintenance, even when the husband was separated. Accordingly *Vrihaspati* having said (in the previous text, p. 135) “even when partition has been made,”—goes on to declare,—“Must allow (her) subsistence, or if she choose, a share of the field.” This text has been explained in the *Smritichandriká*, thus:—The term ‘subsistence’ includes food and raiment; wealth sufficient for the same, or agreeably to her own choice a share of the field equal to that purpose, must be allowed to a widow other than a *patni* who is entitled to the estate of the husband, by the brother &c. taking the estate: the term ‘must’ shows the necessity of giving the allowance. To this very subject refers the

following text of Nárada,—“ All the chaste widows should be maintained with food and raiment, by the eldest (brother of the husband), or by the father-in-law, or by any other gentile”—*i. e.*, whoever takes the husband's estate: maintenance is to be allowed by reason of succession to the estate.

By the term 'chaste' (in the above text of Nárada) it is shewn that, in all (the texts), the maintenance of the chaste widows alone is intended. But that too, even the *patnis* that are unchaste, are not entitled to, by reason of what is ordained in the latter part of the text of Nárada, previously cited (p. 143), viz.—“ but if they behave otherwise, the brothers may resume their allowance,”—and in other texts. Accordingly also Vrihaspati says that what has been given by the father-in-law &c. to the chaste for their maintenance should not be resumed even by other kinsmen, thus—“ But such immoveable or other property, as has been given by the father-in-law to the wives (of his sons) can, on no account, be resumed by the kinsmen here.”

But even what has been given to those that prove to be of a different character may be resumed. This is declared by Kátyáyana,—“(A woman) complying with the wishes of the venerable protector, is entitled to enjoy the allotted share: if she does not comply with their wishes, then she should be reduced to the livelihood of a slave. She who is bent upon injurious acts, is shameless or spendthrift or adulterous, is not entitled to even woman's property.”—By the expression ‘is not entitled,’ two meanings are conveyed, namely, that even what is sufficient for maintenance should not be given, and that even what has been given should be resumed from one that proves to be such.

As for the text of Sruti, namely,—“ Therefore women are devoid of the senses (*anindriyas*) and incompetent to inherit,”—and for the text of Manu based upon it, namely,—“ Indeed the rule is that women are always devoid of the senses and incompetent to inherit;”—these are both to be interpreted to refer to those women whose right of inheritance has not been expressly declared. Haradatta, also, has explained (these texts) in this very way, in his

commentary on the Institutes of Gautama, called Mitáksara. But some (commentators) say that the term 'incompetent to inherit,' implies censure only, by reason of its association with the term 'devoid of the senses.' This is not tenable ; because it cannot but be admitted that the portion, namely, 'incompetent to inherit' is prohibitory and not condemnatory, for it cannot reasonably be held to be an absolutely superfluous precept inasmuch as the taking of the heritage (by women) may take place under the desire (for property). But the portion 'devoid of the senses' is to be somehow explained as being a superfluous precept, and purporting the dependence (of women) on men ; for the negation, what is contrary to the nature, meaning as it does of things, is objectionable. Hence what has been said above forms the best interpretation. The venerable Vidyáranya (*i. e.*, a forest of learning), however, has, in his commentary on the Institutes of Parásara, explained the above text of Sruti in a different way :—The term 'incompetent to inherit' indicates that the wife is not entitled to a share in case of her retirement to a forest ; the term *anindriyás* (rendered above into 'devoid of the senses') embodies the reason for the same ; for it appears from the text *viz.*,—"The *soma* juice indeed is the *indriya*,"—that the term *indriya* signifies also the *soma*, hence those that are not entitled to it are *anindriyás*, *i. e.*, not entitled to taste the *soma* juice : the text being laudatory of the retirement of the wife into a forest (on the death of the husband).

Thus ends the discussion of the wife's right.

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## P A R T I I.

§ 1.—The daughter's succession and the reason for the same. 2.—The reason as stated by Jímútaváhana excluding the barren and widow daughters noticed and criticized. 3.—The opinion that the appointed daughter alone succeeds, is criticized. 4.—The order of succession amongst daughters. 5.—A text of Vrihaspati explained by the author of the Smritichandriká. 6.—The plural number in 'daughters' in Yájnavalkya's text explained.

1. In default of the wife, 'the daughters' are entitled to take the estate of a sonless person who was separated and not re-united. Accordingly Manu says,—“As a man is himself so is his son, a daughter is alike to a son; when there is himself in the shape of a daughter wherefore should any other take the estate?” Also Vrihaspati says,—“A daughter like a son springs from every limb of the father; therefore why should another person take the estate of the father?” Here it is to be observed that although a daughter is directly begotten by the father, still by the terms ‘alike to a son’ and ‘like a son,’ a daughter is declared to be similar to a son, inasmuch as the constituent elements of a son’s body are derived mostly from the limbs of the father, and those of a daughter’s body, mostly from the limbs of the mother; for it is so established in the Institutes of law as well as in Physiology by passages like the following,—“A male child is generated when the virile seed exceeds, and a female child when the uterine blood prevails.” The term ‘himself’ (in the text,—‘when there is himself in the shape of a daughter’) signifies, similar to a son who is even as the father himself by reason of the text,—“Indeed a man is himself born as a son;” “when there is himself in the shape of a daughter,” means, in preference to a daughter.

It may be asked that although the reason as set forth in the above texts indicates the daughter's succession to the estate on failure of the legitimate or *aurasa* son, still on what principle does the succession of the daughter take effect in default of the subsidiary sons and the wife? The answer is, that that too has clearly been set forth by

Nárada for the benefit of the dull; thus he says,—“In default of the sons, however, the daughter succeeds by reason of similar lineage;”—this text again has been explained by Nárada himself, thus,—“A son as well as a daughter are both perpetuators of the father’s lineage.” The intention is this: Both the son and the daughter are the parents of the father’s descendants called (respectively) the *punttra* or the son’s son and the *dauhitra* or the daughter’s son; hence their capacity for perpetuating the lineage being similar, the daughter too, like the son, has the right of succession. But a son’s son and a daughter’s son are not equal in themselves, hence the equality is intended to have reference to their acts. The acts again do not consist in liquidating the debts or taking the unobstructed heritage, for a daughter’s son has no concern with these while there is a son’s son, by reason of the texts, viz.—“The debts are to be liquidated by sons and son’s sons,”—and—“Therein the ownership of both the father and the sons is equal,”—the latter text being relative to the grandfather’s property. Hence the acts here are spiritual ones, namely, the performance of the *sraiddhus*, by reason of the text of Vishnu, namely,—“In the performance of the funeral obsequies of the ancestors a son’s son and a daughter’s son are alike.” Thus a daughter that confers only spiritual benefits through the instrumentality of her son is inferior to a son that renders benefits by means of his sons and confers spiritual as well as temporal benefits. Nor can it be said that thus a daughter who is begotten by a man himself is nearer than the wife, and as such is entitled to take the estate in preference to the wife. Because the wife, who by her companionship assists the husband in the performance of the ceremonies enjoined in the Vedas such as the consecration of the sacred fire, and who renders both spiritual and temporal benefits by being the means of lineage, and by being the instrument of satisfying the human end called desire, and who is extolled as half the body of the husband, —is certainly superior to a daughter. Hence the term ‘in default of the sons’ is to be taken to indicate the failure of the wife also, by reason of the previously cited (Pt. I, § 4) text of Vishnu and this text of Yogisvara (Pt. I, § 1).

Although the father who is the object to whom funeral oblations are addressed by the son, and who as such conduces personally to the spiritual benefit of the son, is nearer than a daughter, and hence the text, viz.—“The father or the brother shall take the estate of a sonless person”—should properly be applied, previously to the daughter’s succession; still she is preferable by reason of the proximity of body as ordained in the text,—“when there is himself in the shape of a daughter &c.”,—and it is in her default that the above text is to be applied, because from the use of the particle ‘or’ (in the above text), it appears that no stress is intended to be put on the order.

2. Jímútaváhana, however, while discussing the daughter’s succession, says,—“Since the perpetuating of the lineage is set forth as the reason for her succession; and since, of the descendants he who offers oblations benefits the deceased, but he who presents no oblation does not confer any benefit, and there being no distinction between the failure of offspring and having offspring other than those that conduce to the spiritual benefit; hence a daughter who has or who is likely to have male issue is entitled to the inheritance; and consequently the opinion of Díkshita is to be accepted, viz, a daughter who is barren or who is widow or who is mother of daughters alone, and as such, is not likely to have male issue, is not entitled to succeed.”

This too is open to criticism. Since he himself maintains the preferential right of the maiden daughter in the passage,—‘First of all the maiden daughter alone succeeds to the estate of the father,’—upon the authority of the following text of Parásara, namely,—“Let the maiden daughter and in her default the married daughter take the property of a sonless deceased person,”—and of the following text of Devala, namely,—“And to the maiden daughter shall be given the father’s wealth (and) nuptial property.” But at that time there is no certainty that she will give birth to male issue; and since what has been set forth as the reason for her succession may reasonably be taken to be intended to indicate only the greater proximity. Moreover he himself shows exceptions to what

he holds to be the reason by laying down the succession of a daughter who has or who is likely to have male issue on failure of the maiden daughter. Therefore, agreeably to what we have said, the reason (as set forth in the texts) is to be explained to intend proximity.

3. Dháresvara, Devasvámin, Devasata and others, however, in order to avoid a conflict of the texts ordaining the daughter's succession with the following text, viz.—“The father or the brothers shall take the estate of a soulless person,”—say, that the texts establishing the daughter's succession (in preference to the father &c.) refer to the appointed daughter (*putriká*) ; in her default, however, the father and the rest are heirs agreeably to their order.

This is very unsound. Since the appointed daughter is placed in the category of subsidiary sons by the following text of Yogisvara, namely,—“The legitimate son is one born of a lawful wife : similar to him is the *putrikásuta* (an appointed daughter or her son)” —and by the following text of Vasishtha, namely,—“The son of an appointed daughter is known as the third (subsidiary son),”—and since, by reason of the text of Manu, namely,—“Not brothers nor the father but the sons (primary and subsidiary) take the estate of the father,”—an appointed daughter, like the other subsidiary sons such as the wife's son, succeeds to the inheritance in spite of the wife ; therefore, *a fortiori* it follows that she succeeds when there is no wife. Hence the above texts would be liable to objection on the ground of being unnecessary, if they be interpreted to refer to an appointed daughter ; also it would be unreasonable to assume without any cause that the texts whereof the terms include all daughters without any qualification, are relative to a particular class (of daughters, viz., the appointed daughters). Moreover, the succession of the appointed daughter is declared (by Vrihaspati) in the text,—“A daughter, like a son, springs from every limb of the father &c.”—which is, agreeably to your contention, relative to the appointed daughter ; the very same thing is again ordained by the very same sage in the text,—“An equal (daughter), espoused by (a person of) an equal (class), chaste and following the wishes

of the husband, appointed or not (expressly) appointed, she takes the property of the sonless father;" hence it would have to be assumed in order to avoid tautology, that the one text is merely explanatory of the other: (in our opinion) however, there is clearly no tautology, the one text being general in its application and the other, particular. 'An equal daughter,' means, a daughter of the same class with the father: 'espoused by an equal' i. e., by a person of the same class; Jímútaváhana says that this excludes those espoused by a person of a superior or inferior class, for it is ordained that a son born of her cannot perform the *sráddha* of the maternal grandfather of a superior class; but this is not acceptable, since a damsel of a superior class cannot be married by a man of an inferior class; therefore the term 'by an equal' is to be taken to be intended to exclude one married to a person of a superior class.

Nor can it be argued that Nárada has laid down as a general rule that all the daughters including the maiden,

who are destitute of the father and the brothers, are incompetent to inherit the estate of the father, for he says,—"If she has a daughter, the paternal share is ordained for (the latter's) maintenance; she shall enjoy the share till her marriage; afterwards the husband shall maintain her,"—'she' (in the first line) relates to a sonless widow, as the text is declared with reference to her; hence if such a widow has a daughter then her paternal property is ordained merely for the purpose of her maintenance, consequently until her marriage she obtains her paternal share solely for her maintenance, 'afterwards', i. e., subsequent to her marriage the husband shall maintain her; therefore also the residue of the property after defraying her maintenance during that time, may be resumed from her: the succession, however, of the daughter, to the father's property, with the power of disposing the same according to pleasure cannot at all be contended for. And that hence all the texts which establish the daughter's succession to the father's estate must be admitted to refer solely to the appointed daughter, as laying down an exception to what is declared in the above text; for otherwise if both the classes of texts referred generally to all daughters

it would be difficult to reconcile them by considering one as laying down a general rule, and the other an exception to it: therefore the opinion of Dhárcesvara and others ought to be accepted as correct.

This contention would have been correct had the text of Nárada referred to the estate of a separated person. But having regard to what precedes and to what follows (the above text in the Institutes of Nárada) it clearly appears that this text refers to the property of one who was joint or re-united. Hence the texts which lay down the succession of the daughter without any qualification, to the estate of the father, in default of the wife, embody a rule not provided anywhere else which is applicable to the property of a separated person, but they do not provide an exception; consequently we do not see any reason whatsoever for considering these texts as referring to the appointed daughter alone.

Jímútaváhana sets forth the text of Devala, viz.—“To the maiden daughters shall be given &c.”,—as an authority for establishing the right of the maiden daughter to succeed to the entire estate of the father. But this is inconsistent with what is said by him in another place; for this very text is cited by him as an authority for allowing, on partition during life, to the maiden daughters, property sufficient for their marriage. That too has been refuted by us before.

4. Amongst the daughters also, first let the unmarried daughters take the paternal property: in their default the married daughters; amongst these also, first the unprovided ones, and on failure of them the provided ones; all in the same predicament, however, take the property dividing it equally. This rule is settled. Accordingly Kátýayana says,—“The wife who is not unchaste, gets the wealth of the husband; in her default, the daughter if she be then unmarried.” Gautama ordains,—“Woman’s property goes to daughters unmarried and unprovided.”—‘Unprovided’ means indigent. Although ‘woman’s property’ is here mentioned, still the reason being the same, the text is applicable to paternal property also. But it is not reasonable to say that the term “un-

provided" means, destitute of offspring by reason of barrenness and the like; for her succession (in that order?) is not proper, inasmuch as she cannot confer spiritual benefit by means of sons.

5. The author of the Smritichandriká explains in the following way the previously cited text of Vrihaspati, namely,—“An equal (daughter) espoused by (a person of) an equal (class), chaste, and following the wishes of the husband, appointed or not (expressly) appointed, she takes the property of the sonless father :”—The first four adjectives refer to a daughter who takes the wealth after the wife; the remaining two adjectives qualify a daughter succeeding in preference to the wife. The substantive *puttriká* or the appointed daughter is to be supplied to the adjectives ‘appointed or not (expressly) appointed;’ the substantive ‘daughter’ is to be supplied to the other adjectives. The particle ‘or’ marks an alternative applicable to a determinate different state of things. Thus the meaning is as follows: The twofold appointed daughters are entitled, in preference to the wife, to take the property of the father destitute of legitimate sons; and the daughters who are qualified by the adjectives ‘equal’ &c. succeed on failure of the wife. Thus in default of the wife, when there are daughters provided as well as unprovided, married as well as maiden, then first, the maiden daughter alone succeeds, for the father was bound to maintain her; in her default, a married daughter who is unprovided (succeeds), for though the husband is bound to maintain her, still she is unprovided by reason of the husband’s inability to maintain her; on failure of her, even a provided daughter qualified by the attributes ‘equal,’ &c. takes the property agreeably to the propinquity previously mentioned.

Others, however, having admitted that the term ‘appointed’ means the *puttriká*, and the term ‘not appointed,’ any other daughter, and that the particle ‘or’ indicates indifference, explains without supplying any substantive that the whole text refers to any daughter, because the pronoun ‘she’ relates to the daughter without any qualification, (as used in the preceding text).

6. The plural number in the term 'daughters' (in Yájnavalkya's text p. 131) is used for the purpose of showing that the shares of the daughters of the same class are equal, but the shares of the daughters of different classes are distinct agreeably to the order of their classes.

Here ends ~~the~~ succession of the daughters.

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### PART III.

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§ 1.—The daughter's son's succession.—2. The interpretation that the daughter's son means the appointed daughter's son, is rejected.—3. The daughter's son is not entitled to preference to the widow and the daughter.

1. On failure of daughters, the daughter's son (becomes heir); for the term 'also' (in Yájnavalkya's text,—'and the daughters also,'—p. 131), indicates the inclusion of what is not expressed. Accordingly Vishnu says,—“On failure of descendants such as the son and the son's son, the daughter's sons obtain the property; for, in the performance of the funeral obsequies, the son's son and the daughter's son are alike.” The term ‘on failure of the descendants such as the son and son's son,’ indicates the failure of heirs down to the daughters. Also Manu says,—“(If a daughter) whether appointed or not appointed brings forth a son by her marriage with a person of equal class; in him, the maternal grandfather has a son's son: he shall offer the funeral oblations and inherit the wealth.”—By the term ‘has a son's son,’ it is shown that as a son's son succeeds to his paternal grandfather's estate in default of sons, so the daughter's son in default of daughters. Also Vrihaspati says,—“As her ownership arises in the father's wealth, although kindred exist; in the very same way, her son also obtains the estate of the mother's father.” The meaning is:—‘As’, i. e. through the funeral oblations offered by the daughter's son, the daughter becomes heiress of her father's estate; ‘in the very same way,’ i. e. through

the selfsame offering of oblations, the daughter's sons also become the owners of the maternal grandfather's wealth; 'although kindred,' i. e. the father and the like 'exist.'

2. It cannot be said that this text (of Vrihaspati) refers to the son of an appointed daughter; because the pronouns 'her' and 'her son' relate to the unqualified daughter mentioned before. Accordingly Manu also has declared the right of succession to the maternal grandfather's estate, of the son of a daughter without any qualifications, thus,—“The daughter's son indeed, shall take the entire estate of the (mother's) sonless father; he alone shall offer two oblations to the father and the maternal grandfather. Between a son's son and a daughter's son, in this world, there is no difference in law; since their mother and father are sprung from his body.”—The term ‘father’ is to be interpreted as the mother's father, accordingly the term ‘maternal grandfather’ is subsequently stated: or (it may mean) as he takes the entire estate of his own father so also of the mother's father who leaves no male issue, by reason of his personally performing the duties of his son; this is expressed in the passage, ‘he alone &c.’ the meaning is, to his own father and the mother's father: the terms ‘mother and father’ are not to be construed respectively, but the proper construction is that the son's son's father and the daughter's son's mother are sprung from the body of the proprietor.

3. Some commentators, however, taking the text of Vishnu, viz.—“On failure of descendants such as the son and the son's son &c.”—in its literal acceptance, say that the daughter's son succeeds in preference to the widow and the daughter. This is to be rejected, because it would be in conflict with the text of Yogisvara, and because the inferiority of the daughter's son to the daughter is indicated also in the text of Vrihaspati, namely,—“in the very same way her son also.”

Thus ends the succession of the daughter's son.

## P A R T I V.

§1.—Succession of the parents. 2.—A passage of the Mitákshará, cited, where the order of succession between parents is determined. 3.—A passage of the Smritichandriká cited, criticizing the Mitákshará. 4.—The Dáyabhágá cited. 5.—Of the priority of the father. 6.—Objections against the Mitákshará, removed. 7.—The author's conclusion.

1. On failure of the daughter's son, 'the parents' (*pitarau*) take the estate, (vide Yájnavalkya's text, p. 131).

2. On this subject it is said in the Mitákshará:—Although the order in which the mother and the father succeed to the estate does not clearly appear (from the term *pitarau* in Yájnavalkya's text, p. 131,) since a conjunctive compound is declared to signify simultaneously the sense of the component words, and the uni-residual compound (in which one of the words is retained and the other is suppressed) is an exceptional form of the same; yet, as the word 'mother' stands first in the phrase where-of the uni-residual compound is the result, and is read first in the form other than the uni-residual, *viz.*, *mátrápiturau* or 'the mother and the father'; therefore the order of the sense, as deducible from the order of reading, should not be rejected, when there is an inquiry concerning the order of succession; hence the mother takes the estate of her sonless son, in the first instance; and, on failure of her, the father. Besides, the father is a common parent to other sons, but the mother is not so; hence her propinquity is the greatest. And Manu has, in the text,—“To the nearest *sapinda* the inheritance next belongs”—laid down the rule that even amongst the *sapindas* the *samánodakas* and the like, the greatness of propinquity determines the right of succession. Consequently when there is this question for determination, there is nothing to prevent the application of this text (of Manu) to the present case also.

3. Thereupon, the author of the Smritichandriká makes the following refined observations: There being no indication of order in the text,—“There are two sárasvata sacrifices,” (or sárasvatau, one in honor of the goddess Sarasvati, the other in honor of the god Sarasván)—it is established in the fifth chapter (of the Mímánsá) that the order of performing the sacrifices is regulated by the order of the hymns (called *yáiyas*) ; but it is not established that any indication of the order arises from the uni-residual compound itself, (*viz.* sárasvatau). Similarly, in this instance too, other authority ought to be searched for establishing the order of succession ; if there be no other authority, then it is reasonable to say that both the parents take the estate, dividing it in equal shares, for, as in the conjunctive compound so in the uni-residual form, the conjunction of the two words is expressed. As for what has been said (in the Mitákshará), namely, ‘that it is proper that the mother should succeed in preference to the father, by reason of her greater propinquity, inasmuch as the father is common to even the sons of the step-mother but the mother is not so’;—that too is not consistent with reason. Since there cannot be greater or lesser propinquity of the mother and the father to their offspring ; for although the father may beget other sons, still he is equally with the mother, the parent of an offspring ; since causality (of the parents in begetting a child) cannot be considered to exist separately in each parent (but exists jointly in both.) Nor can it be argued that the estate if taken by the father may descend even to stepbrothers, but if obtained by the mother, it will go only to the whole brothers ; therefore the mother succeeds (in preference to the father). Because such propinquity being the standard whereby the succession of the brothers and sisters is determined, cannot reasonably be taken to be the criterion for determining the succession of the mother in preference to the father ; and because propinquity is of no consequence in this case, where co-equality is expressed by the uni-residual compound which is an exceptional form of the conjunctive compound. Indeed where the question concerning the order (of succession) arises, there propinquity determines the order, and not otherwise. Hence the right of the parents

being co-equal they shall take in equal shares the estate of a son without issue. This is maintained by Sríkara. But it is not reasonable. For the joint succession of the father and the mother cannot take effect, inasmuch as the independent right of each of them appears from the texts—“The father shall take the estate of a sonless person,”—and—“Indeed the mother shall take the estate of a person who departs for heaven without leaving male issue;” just as when it appears that rice or barley is a means (of something) independently of each other, it does not follow that their mixture has the same effect. Some (commentators) say that the mother is entitled to succeed first, because she confers a greater amount of benefit by bearing the child by nursing it and by the like acts, and because it is laid down that,—“The mother is entitled to reverence a thousand times more than the father.” This too is nothing; since the father also confers benefits in various ways, by performing the initiations, by furnishing the means of maintenance, &c., and since it is contrarily laid down that—“Of these again the father is superior, because the seed is declared to be superior.” If the reverence alone due to a person had had any effect in determining the succession, then the spiritual preceptor would have succeeded even in preference to the father, inasmuch as it is declared that—“Of the parent and the preceptor of the Vedas, the father preceptor is superior;” and the paternal grandfather, the paternal uncle and the like would have succeeded in spite of the brother and the brother’s son.

4. Jímútaváhana, however, says: “From the term ‘the parents’ or *pitarau* (pt. 1, sect. 1) it appears that the father is first in the order; since by the radical word *pitri* (whereof the dual number in the nominative case, is *pitarau*) the father is first suggested; and the dual number suggests that the term *pitarau* is the result of the unresidual compound in which one word has been suppressed, but as this compound cannot reasonably be taken to be one of two similar words, (meaning two fathers) therefore in conformity with what has been declared by Vishnu, Manu and others, it is ascertained to be one of two dissimilar words; and then the mother is suggested. Hence

what is said by Śrīkara, namely, that 'the mental apprehension of an order (of succession) can take place only when there is an expression of such order, hence the expression of order being wanting, the apprehension (of the same) cannot take place'; and the reverse order as maintained by Vijnānesvara—are not consistent with reason."

5. Hence when there is difference as to the order to be reasonably deduced from the term *pitaraū* or 'the parents,' the order as declared in the text of Brihadvishnu ought to be accepted. And in that text it is first said that 'it devolves on daughters,' and it is then stated that 'if there be none, it belongs to the father; if he be dead, it goes to the mother.' The author of the Mitāksharā, however, certainly manifests a great deal of thoughtlessness when he first of all cites this text of Brihadvishnu, adopting the above reading, and then relying upon mere reason contrary to it, concludes that among the parents the mother succeeds in preference to the father. The daughter's son again being included in the category of 'daughters' has not separately been mentioned by Brihadvishnu, therefore it is to be observed that the default of daughters indicates the default of the daughter's son also. Hence the conclusion arrived at by many commentators such as the authors of the Smritichandrikā, the Madanaratna, the Kalpataru, the Ratnākara and the Pārijāta, is that it is only in default of the father that the mother succeeds to the estate of a son without male issue.

Vāchaspati, however, reads the text of Brihadvishnu in the following way, namely,—'if there be none, it goes to the mother; if she be dead it belongs to the father'—and thus comes to the same conclusion as in the Mitāksharā. But this is undoubtedly erroneous, as this reading is not met with in any other work.

6. Also the argument in the Mitāksharā, namely, "as the word 'mother' stands first in the phrase whereof the uni-residual compound is the result"—is said to be erroneous; for the rule that the term 'mother' must stand first, is not applicable to the phrase which is reduced to

the compound, since that rule is laid down by grammarians with regard to the compound, but not in respect of the phrase to which the compound is resolvable. We now proceed to remove this and other objections raised by others against the reason assigned by Vijnánesvara. The proposition, however, that a conjunctive compound signifies simultaneously the sense of the component words, has been refuted at great length in the Bárтика and the Tantraratna while dealing with the subject of the construction of sentences. But as regards the construction with any other word in the sentence, the conjunction of the component words is grammatically conveyed by the conjunctive compound ; hence in the passage, “ the parents (*pitarau*) are heirs,” although the grammatical construction (of ‘ the parents’ with the other words) is simultaneous, still there can be no defect in the sentence even if there be in reality an order between the two parents. This being admitted by Sríkara and all others, all this may be solved. Now since in the forms (of the compound) other than the uni-residual one, namely, *mátpitarau* and *mátarapitarau* or ‘ the mother and the father,’ the term mother takes its place first; and since, if the complete and the uni-residual forms of the conjunctive compound had not been capable of conveying the same idea, the optional use of either form would not have been directed; therefore it should be admitted that by the uni-residual form also, the same idea is conveyed in the same order. And although the rule is not authoritatively laid down that the term ‘ mother’ must stand first in the phrase into which the compound is resolvable, yet it is certainly established by the uniform practice of all commentators; since nowhere is the compound *pitarau* found resolved into the phrase ‘ the father as well as the mother,’ but always into the phrase ‘ the mother as well as the father.’ Hence by reason of the maxim that ‘ even a minute distinction may lead to a conclusion,’ this too may effect the determination (of the order of succession). It may be that what has been said by the author of the Mitákshará is with this intention.

Although the causality of the parents in the production of a child does not separately exist in each parent, still the greater propinquity of the mother, deduced from

the consideration that the father may be a common parent to other sons but the mother is not so,—has been said (by Vijnánesvara) with reference to that consideration alone. There are certainly the attributes of (the one's) being common and (the other's) being not common, arising from relationship and consisting (respectively) in the tardiness and the facility of realizing the notions conveyed by the (correlative) terms (father and mother); for it is so felt.

' When no order is indicated by the grammatical meaning of the passage, wherefore then is an order in fact assumed ?'—This argument of Srikara, however, which the authors of the Smritichandriká, &c. also had to meet, is refuted on the ground that an enquiry into the order arises, inasmuch as the independent right (of each of the parents) is laid down in other texts.

7. All that remains is the conflict with the text of Brihadvishnu, which it is difficult to answer. That also we proceed to reconcile as far as we are able to do. Now we find that there are conflicting texts establishing the comparative reverence due to the father and to the mother. These must be reconciled by referring them to different cases. Thus, the following texts and others to the same effect establish that higher reverence is due to the mother; viz.—“The preceptor of the Vedas ten times more than the tutor, the father hundred times more than the preceptor, but the mother a thousand times more than the father, is entitled to reverence,”—and—“The mother is entitled to a greater degree of piety by reason of her bearing the child and nursing it”: while texts of Smriti, such as—“Of these two, again, the father is superior, because the seed is declared to be superior,”—and facts like the following related in the Puráñas, namely—that Parasuráma, in compliance with the order of his father, beheaded his mother, and that Ráma, although prevented by Kausalyá (his mother) did, in obedience to the command of his father, renounce the throne and retire to the forest,—show that higher reverence is due to the father.

And the way in which these may be reconciled is this : When the father is endowed with all the qualities entitling

him to the greatest veneration, as is described in texts like the following one of Yogísvara, namely,—“A father is entitled to the highest veneration, who having performed the initiatory ceremonies, instructs the son in the Vedas;” and when the mother is devoid of all those virtues which constitute chastity, such as obedience to the husband: then, of these the father is entitled to higher respect than the mother. If, however, the mother is like Arundhatí, endowed with all the virtues of chastity, and the father is merely the progenitor; then in such a case the mother is indeed entitled to greater respect than the father. Likewise, from the story of Chirakáriká in the Mahábhárata also, this distinction appears as the purport of that story. Hence in this instance also, the succession to the estate of a son without male issue, which, as laid down in the texts of Manu and other sages, appears to devolve in the first instance to the mother according to some (texts), and to the father agreeably to others,—ought properly to be reconciled in this way alone. Thus, Manu says,—“The mother shall obtain the property of a son without male issue, and if the mother be dead, then the father’s mother shall take the estate:” Vrihaspati says,—“The mother shall take the estate of a deceased son who leaves neither widow nor son, or a brother (shall take) by her permission:” again Manu says,—“The father or the brothers alone shall take the estate of one leaving no male issue:” the text of Brihadvishnu, cited before, lays down that “if there be none, it belongs to the father; if he be dead, it goes to the mother:” and in the text of Yogísvara is used the term “parents,” which, according to Vijnánesvara, signifies ‘first the mother and after her the father,’ and according to others, the joint succession of both the parents, or the priority of the father. There being this diversity, (the reconciliation is, that) the mother succeeds in preference to the father, if she be entitled to greater reverence than the father; but she is postponed to the father, if she be entitled to lesser reverence than the father. And it is reasonable that a mother who confers greater benefits than a father who does not provide with the means of maintenance and the like, should take the estate; and that a father who furnishes with the means of maintenance

and the like, and consequently renders the greatest benefit by rearing and by providing with the means of subsistence for life, should take the estate (in preference to the mother). It should be particularly noticed by the learned, that it is thus that all the texts and all the commentaries become reconciled.

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## PART V.

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§ 1.—Succession of brothers. 2.—Of whole brothers and half brothers.

On failure of the parents the brothers take the estate.

Although it appears from the text of Sankha and Paithñasi, namely,—“The wealth of a sonless person who departs for heaven goes to the brothers ; if there be none, let the parents take &c.”—and from the text of Manu, namely,—“Or the brothers alone”—that the brothers succeed in preference to the father ; and it appears from the text of Manu, namely,—“And if the mother too be dead, the father’s mother shall take the estate”—that the paternal grandmother is entitled to succeed in preference to the brothers : still in order to avoid a conflict with the texts of Yogisvara and Brihad Vishnu which lay down the order of succession, it is to be held that the above texts lay down merely their right of inheritance ; and that with a view to intimate that there is no conflict with the above order, Manu and Paithñasi employ the term ‘or’ thus, “or the brothers alone” and “or let the senior wife take ;” otherwise, if they were heirs of equal position the use of the particle ‘or’ would be extremely unreasonable. This is the opinion of the author of the Mitákshará and of many others.

But the author of the Kalpataru says :—When there are the widow and a brother, then the chaste widow who is competent to perform the funeral obsequies and the like, succeeds first ; but one who is not so, succeeds after a brother and the father : but when there are the father and a brother, then the property which was acquired by

the father, grandfather &c., and which on partition was allotted to the son, goes to the parents if the son dies without male issue ; but the property which was acquired by him without using paternal property devolves on the brother notwithstanding the parents.

But it appears to me that in the text of Manu, namely,—“if the mother too be dead, the father’s mother shall take the estate”—and in the text of Sankha and Paithinasi, namely,—“if there be none, let the parents take”—and in the text of Devala, namely,—“Then the uterine brothers shall divide (amongst themselves) the heritage of one leaving no male issue ; or else the equal daughters ; or else the surviving father ; the brothers of the same class, the mother or the widow, agreeably to their order : in default of all these, those kinsmen (*kulyas*) who dwell together shall take”—order is expressed by the terms ‘dead’ ‘in his default’ and ‘agreeably to their order.’ Hence it is not at all a perfect reconciliation to say that the texts of Yogisvara and Vishnu being alone declaratory of the order of succession, and the other texts being intended to show merely the right of inheritance, no objection can arise from the assignment of positions (to these heirs) in the latter texts, contrary to those in the previous ones. But as in the instance of the wife’s son and others, the conflicting order expressed in the texts of law has been reconciled with reference to their possession or want of good qualities and to their friendliness or animosity towards the legitimate (*aurusa*) son ; so here too in the chapter on Partition of Heritage, the description of the sons &c. conferring benefits upon the father &c., or the description of the possession or want of good qualities, can have no other object, like the description of comparative propinquity. Hence any conflict of texts with regard to the order of succession is to be reconciled with reference to the possession or want of good qualities, and to the greatness or smallness of benefits conferred upon the proprietor. Any other reconciliation is not acceptable as being imperfect. Similarly in any instance in the sequel. Thus every thing is consistent.

2. Amongst the brothers also, first the uterine bro-

thers (succeed). Because it is laid down by Manu in the text,—“To the nearest *sapinda* the inheritance next belongs”—and by Vrihaspati in the text—“When one has many *jnātis* (or kinsmen,) *sakulyas* as well as *bāndhavas*; he who is nearest among these shall take the estate of one leaving no male issue”—that the greatness of propinquity is alone the criterion (of succession) in the absence of special provision; and the remoteness of half brothers is caused by their mother. But the term ‘brothers’ being used without any qualification, the half brothers succeed in default of uterine brothers. This is clearly stated by the author of the *Sangraha*, thus,—“If there be two classes of brothers, namely, whole brothers and half brothers; then the whole brothers take the estate notwithstanding the half brothers.”

Thus ends the succession of brothers.

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### P A R T V I.

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§ 1.—Succession of the brother’s son. 2.—Uterine brother’s son succeeds in preference to a half brother’s son.

1. In default of brothers, ‘their sons’, *i. e.*, the brothers’ sons are heirs. Nor can it be said that since by the term ‘likewise’ in the passage ‘likewise, their sons,’ similarity between the brothers and the brothers’ sons is indicated; and since it has been declared that—“Among those, however, whose fathers are different, the allotment of shares is according to the fathers;”—therefore on failure of the parents, let them both jointly take the estate. Because, for fear of a conflict with the text of Vishnu, the term ‘likewise’ is to be taken to convey the same meaning as the term ‘and.’ Otherwise, as the term ‘likewise’ might as well be construed with what precedes, wherefore could not the joint succession of the parents and brothers take place? If it be said that it does not take place by reason of its conflict with the text of Vishnu—the same may be said in this instance as well. And the meaning

of the text, “ Among those, however, whose fathers are different &c.”—is this : when on the death of a brother their right takes effect, *i. e.* when any brother dies without leaving male issue and the right of all the surviving brothers accrues to the estate left by him, but if prior to the partition of the estate any one amongst these also die, then his sons would have become entitled to equal shares with their uncles, but (agreeably to the above text) they are all to take that share only which their father would have taken on partition, and not each a share equal to that of an uncle. Because, while a brother is alive, his sons have no right to the estate of their uncle ; since it is declared in the text of Yogisvara that “ in the absence of the preceding one, every succeeding one is heir;” and since in the text of Vishnu, namely,—“ On their default it goes to the brothers’ sons,”—the failure of brothers is expressed, as the pronoun ‘ their’ relates to the term ‘ brothers.’

2. Amongst the brothers’ sons also, the sons of the uterine brothers, by reason of their greater propinquity, succeed in the first instance ; in their default, the sons of half brothers. And this is reasonable ; because a son of a half brother presents the *pinda* to the (deceased) proprietor’s father and to his own paternal grandmother, omitting the proprietor’s mother, therefore he being inferior to a uterine brother’s son succeeds after him. Nor can it be argued that inasmuch as the three ancestors together with their wives are the objects to whom the funeral oblations are addressed, therefore the rival mother and the like also are included. Because the terms ‘ mother’ and the like signify primarily one’s own parent, the father’s parent, and the grandfather’s parent ; and these as such are declared to be the objects to whom oblations are offered ; thus, it is ordained,—“ The mother partakes of the funeral oblations consisting of food with her own husband ; also the paternal grandmother with her own, and with her own the paternal great-grandmother.” The offering of oblations to the rival mother and the like, rather follows from what is declared in the text, viz.—“ Those men as also women who die without male issue ; to them also should be offered oblations addressed to a single indivi-

dual, but not such oblations as are presented on *parva* occasions." Besides, all persons beginning with the son are competent to perform the ceremony of the *srāddha* in honor of the forefathers with their wives, and there are not always the rival mother and the like, therefore it is reasonable to hold that the rule of presenting oblations to the ancestors with their wives includes only the mother and the like, so that there might not be the objection of uniting what is constant with what is accidental.

Thus ends the succession of brothers' sons.

### P A R T V I I.

§ 1.—Of the gentiles; its meaning as in the Mitákshara. 2.—The same as in the Smritichandriká and Dáyabhágá. 3.—Criticized. 4.—Gentiles consist of the *sapindas* and *saṁanodukas*; these terms explained. 5.—Cognates; three descriptions; maternal uncle &c. 6.—Preceptor and pupil. 7.—Fellow-student. 8.—The king. 9.—The Bráhmaṇas.

1. On failure of the brothers' sons, (the heirs are) the 'gentiles' (*gotrajus*) who are to be taken to be other than the father, the brother and his son that have been previously set forth, by reason of the rule of 'the bulls and the beeves.'

Vijnánesvara says:—The gentiles are the paternal grandmother, the *sapindas* (or persons of the same family or *gotra* connected through the *pinda* or body), and the *saṁanodukas*, (or persons of the same family other than the *sapindas*). Of these the paternal grandmother succeeds in the first instance. Although it would appear from the text of Manu, namely,—“when the mother too is dead, the father's mother shall take the estate,”—that the succession of the paternal grandmother takes place immediately after the mother; still she cannot reasonably be placed between the settled series of heirs from the parents to the nephew: and there is no reason for postponing her further, in spite of her superiority (as set forth in the text

of Manu) : hence it is only after her that the paternal grandfather and other gentiles succeed.

2. On this subject the author of the Smritichandriká says :—The term gentiles or *gotrajás* (or those descended from the *gotra* or family), being a uni-residual compound of similar terms, denotes males only, but not females. For a term is taken to be an uni-residual compound of dissimilar terms, when it is shewn to be so by the purport as understood from other evidence such as the association with another sentence, just as in the passage, “ Bring two chickens, which will make a pair;” but there is no such evidence in the present instance. On the contrary, the association with the terms brother’s sons &c. shows that the male gentiles alone are intended. Besides, the succession of the widow, the daughters and the like being specially laid down, the text of Sruti, namely,—“ Therefore women are devoid of the senses, and incompetent to inherit”—may be explained to refer to other women than these (with regard to whose succession there are special provisions); but in the case of the gentiles and so forth, the supposition of the term being a uni-residual compound of dissimilar terms ought rather to be rejected, in order to avoid a conflict with that text. Accordingly, while explaining the text of A’pastamba, namely,—“ The father during his life may divide the heritage among the sons,”—the commentator says, ‘ may divide the heritage among the sons only, not among the daughters, they being females’; and then goes on to say,— Although here the term ‘sons’ may be made to include daughters, by considering the term ‘sons’ to be a uni-residual compound of sons and daughters, upon the authority of the Aphorism of Páṇini, namely,—“ The terms brother and son (may be compounded in the uni-residual form) with the terms sister and daughter” (respectively); yet the males are heirs and not the females, by reason of the following text of Sruti,—“ Therefore women are devoid of the senses, and incompetent to inherit.” The intention of the commentator is, that although there is authority for taking the term ‘sons’ to be a uni-residual compound of dissimilar terms, still in the instance under consideration, it is not taken to be so, by reason of conflict

with the text of Sruti and by reason of the absence of anything suggesting that purport.

Also Jímútaváhana says :—And Yájnavalkya makes use of the term *gotrajas* or gentiles for the purpose of showing that the daughters' sons of the father &c., who are descended from the same *gotra*, become heirs in the order of their nearness with reference to the offering of oblations ; also for the purpose of excluding the wives of *sapindas*, they being not sprung from the same *gotra*. Accordingly Baudháyana, having in the previous text, said, “a woman is entitled to,” declares,—“Not to the heritage, since a text of the Sruti ordains, ‘women are devoid of the senses, and incompetent to inherit.’” The construction is that a woman is not entitled to the heritage. The succession of the widow and the like is not opposed (to the above interpretation) inasmuch as that is expressly declared.

3. That is not good. Since in the texts of Manu and others, cited before, the succession of the paternal grandmother has expressly been laid down ; therefore even if the text of Yogísvara be, consistently with those texts, considered to include her by taking the term gentiles or *grotajás* to be a uni-residual compound of dissimilar terms, there would be no conflict with the (above mentioned) Sruti which may be held to refer to women other than the paternal grandmother.

Jímútaváhana, however, does, in that part of his work where he deals with the mother's succession, say,—“The paternal grandmother's succession takes place after the paternal grandfather and before the grandfather's descendants, like the mother's succession after the father. The succession of the paternal grandfather and grandmother has not been separately propounded by Yájnavalkya, inasmuch as the same is virtually declared by showing the mother's succession.” But in this part of his work, he says,—“The term *gotraja* has been used for the purpose of excluding the wives of the *sapindas*.” Thus he fails to observe that he contradicts himself. For in the text of Yogísvara, the absence of express mention of the paternal grandmother is the same as that of the wives of the paternal uncle

&c.; so the text of Sruti, declaring incompetency to inherit is as well applicable to the paternal grandmother as to the wives of the paternal uncle.

Agreeably, however, to the interpretation put upon the text of Sruti, viz.—“Therefore women are devoid of the senses &c.—by the venerable Vidyáraṇya, which has previously been cited (p. 175), this text does not at all prohibit women’s right of succession : so there can neither be a doubt (as to their competency to inherit) nor an answer (to such doubt). But it should be remarked that how can that interpretation be accepted when it is in conflict with the text of Baudháyana ? For although the term *indriya* may be taken in any of its acceptations, still there is nothing else (in the text of Sruti) to support women’s incompetency to inherit, and it cannot be held that the text of Sruti has nothing in it to support the position that women are not entitled to inherit ; hence it cannot but be held that the text of Sruti does prohibit women’s right of succession, inasmuch as otherwise the quotation (by Baudháyana) of that text as establishing the position would be unreasonable : just as in the instance, “Therefore an unknown embryo being killed (a man becomes) murderer of a Bráhmaṇa.”

4. On failure of the paternal grandmother, the paternal grandfather and the other *sapindas* of the same *gotra* are heirs ; since the *sapindas* (or persons connected through the *pinda* or body) of a different *gotra* are included under the term *bandhu* or ‘cognates.’

Among these also, in default of the father’s descendants, the paternal grandmother, the paternal grandfather, the paternal uncles and their sons become heirs in their order ; in default of the paternal grandfather’s descendants, the paternal great-grandmother, the paternal great-grandfather, his (paternal grandfather’s ?) brothers and their sons ; similarly to the seventh (degree) the *sapindas* of the same *gotra* take the estate of a person without male issue.

On failure of the *sapindas*, the *samánodakas* (succeed). They comprise seven (degrees) above the *sapindas*, or all whose birth (from the same *gotra*) and (family) name are known. Thus Manu says,—“The *sapinda* (or consan-

guine) relationship, however, ceases in the seventh generation, but the *samānodaka* relationship extends up to the fourteenth (generation), or as some affirm to those whose birth and name are known. The term *gotra* signifies these (*i. e.*, the *sapindas* and the *samānodakas*).” It has already been shown that, in the text of Vishnu (p. 142) the term *bandhu* signifies a *sapinda*, and the term *sakulya* means a *sagotra*. The *samānodakas* also become heirs in the order of propinquity.

5. On failure of the *samānodakas* the ‘cognates’ or *bandhus* are heirs. The cognates are of three descriptions; the cognates of a man himself, the cognates of the father, and the cognates of the mother. To this effect is the following passage of the Smriti,—“One’s father’s sister’s sons, one’s mother’s sister’s sons and one’s maternal uncle’s sons are to be known one’s own cognates; the father’s father’s sister’s sons, the father’s mother’s sister’s sons and the father’s maternal uncle’s son are to be known the father’s cognates; the mother’s father’s sister’s sons, the mother’s mother’s sister’s sons and the mother’s maternal uncle’s sons are to be known the mother’s cognates.”

Amongst these also the order is, that, by reason of greater propinquity, first one’s own cognates, after them the father’s cognates, and after them the mother’s cognates.

In the text of Manu, namely,—“In their default, a *sakulya*, or the preceptor, or a pupil (becomes heir).”—the term *sakulya* includes the *sugotras* (*sapindas*?) and *samānodakas*, the maternal uncle and the like, and the three classes of cognates. Also in the text of Yogisvara the term ‘cognates’ or *bandhu* comprises also the maternal uncle. Otherwise, the exclusion of the maternal uncle and the like would be the result. And it would be extremely improper that their sons are heirs, but they themselves though nearer are not heirs.

6. In default of the cognates, the preceptor is heir. Although the preceptor is not mentioned in the text of Yogisvara, still the pupil has been mentioned; and it ought, by reason of propriety, to be held that the precep-

tor who is superior to him and nearer, is implied. Because the succession of a pupil on failure of the preceptor is expressly declared by Manu in the text,—“or the preceptor or a pupil,” and by A’pastamba in the text,—“ If there be no male issue, the nearest *supinda* inherits ; in their default, the preceptor ; failing him, a pupil.”

7. On failure of a pupil, the fellow student takes the estate ; that is, he who received his investiture and education from the same preceptor.

8. If there be no fellow students, the king shall take excepting the estate of a Bráhmaṇa, by reason of the text of Vasishtha, cited before, which, after declaring the succession of all down to the pupil, says,—“in his default, it goes to the king excepting the property of a Bráhmaṇa,” —and by reason of the text of Manu, namely,—“ In default of all those, however, the property shall go to such Bráhmaṇas, as are versed in the three Vedas, as are pure in body and mind and as have subdued their passions : thus, religious merit is not lost. The property of a Bráhmaṇa shall never be taken by the king : this is the settled law. But the wealth of the other classes, on failure of all (heirs,) the king may take.”

9. In default of all down to the fellow student, the wealth of a Brahmana is taken first by a *srótarya* or such a Brahmana as is versed in the Vedas ; failing him, by any Bráhmaṇa. Thus Gautama says,—“ The *srótrijas* shall take the estate of a Bráhmaṇa leaving no male issue.” But any Bráhmaṇa succeeds, as in the text of Manu the term Bráhmaṇa is used without any qualification. It is also declared by Nárada,—“ If there be no heir of a Bráhmaṇa’s wealth, on his demise, it must be given to a Bráhmaṇa. Otherwise the king is tainted with sin.”



## P A R T   V I I I .

§ 1.—Succession to the property of a hermit, &c. ; the text of Yájnavalkya explained. 2.—An objection stated and answered.

1. With reference to the estate left by a hermit, &c., an exceptional rule, excluding the (ordinary) heirs such as the son and the rest also the wife and the like, is propounded by Yogísvara, thus,—“The heirs of a hermit (*vánaprasha* or one who has entered the third order of life), or an ascetic (*yati* or one desirous of *moksha* or liberation from transmigration) and of a student (*brahmachári*), are, in their order, the preceptor, the virtuous pupil and the spiritual brother resident in the same holy place.”

The term ‘student’ here, by reason of its association with the term ‘ascetic,’ means a lifelong student (*i. e.* one who has taken a vow to remain a student for life and not to enter into a married life): hence the estate of a person who has been leading the temporary life of a student (which every twice-born is enjoined to lead before becoming a householder) devolves on the parents and the like in the specified order, for such a person cannot have heirs from a son down to a daughter’s son.

The order mentioned in the above text is to be understood to be the inverse one. Accordingly the wealth of a deceased student goes to the preceptor; of an ascetic, to the virtuous pupil; of a hermit, to the spiritual brother resident in the same holy place.

The spiritual brother is one adopted as a brother; the term holy place signifies a hermitage, hence resident in the same holy place, means, resident in the same hermitage; the meaning is, one who is a spiritual brother as well as is resident in the same holy place.

The virtuousness of a pupil, however, does not mean good conduct. For the exclusion from inheritance, of even the son and the rest, whose conduct is bad, is established by other authority. And that will be mentioned.

But it is to be taken to consist in the capacity for understanding lectures on psychology, digesting the same and following its doctrines in practice.

The author of the Madanaratna, however, having cited the text of Vishnu, namely,—“The preceptor shall take the wealth of a hermit (*vánaprastha*), or the pupil,”—and thinking the order (mentioned in Yájnavalkya’s text) to be direct and not inverse, says that in default of the preceptor the pupil takes the wealth of a hermit.

2. If it be said :—It being established that the life-long student and others have no concern with property, in texts like the following one of Vasishtha, namely,—“They who have entered into another order, are debarred from shares,”—the declaration, in the above text of Yájnavalkya, of the succession to their estate is not proper. Nor can it be argued that although their right of taking the heritage is forbidden by Vasishtha and others, still the above text establishes the right of succession to their property acquired by other means. Since it is ordained that, “A student and an ascetic both are owners of the prepared food (and of nothing else),” and since acceptance and the like (means of acquisition) are prohibited to students, and since the saving of property by an ascetic is prohibited in the text (of Gautama), namely,—“A mendicant shall have no hoard.”

The answer is, that it is not tenable. Since, by reason of the text, namely,—“(The hermit) may make a hoard of things sufficient for a day, a month, six months or a year; and in the month of A’svina he should give away what has been collected,”—a hermit has certainly some property sufficient for food, &c.; the ascetic too has something such as clothes, books, &c., by reason of the text,—“An ascetic should wear clothes to cover his privy parts, and take the requisites for austerities (*yoga*) and the sandals;” the lifelong student also must have clothes and the like for the protection of his body. Hence the question occurring, who is to take these things belonging to them, after their death? the above heirs are declared to the exclusion of other heirs.

## CHAPTER IV.

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### RE-UNION.

§ 1.—Equal distribution. 2.—Self-acquired property. 3.—With whom re-union may be formed. 4.—Succession to re-united property ; two couplets of Yájnavalkya explained ; Manu cited. 5.—Interpretation by Sríkara. 6.—Same as in the Smritichandriká. 7.—Same by Súlapáni. 8.—Same as in the Dáyatattva. 9.—The wife's succession. 10.—The Sister. 11.—The *Sapindas*, &c. 12.—Sons re-united or not, equally succeed ; an exception regarding a son born after partition. 13.—Maintenance of the wife and daughters ; the marriage of the latter.

1. Now the partition of re-united property is considered.

On that subject, Manu says,—“Should those, who dwell together after having been separated, again divide their property ; in that case the distribution shall be equal ; there is no deduction for seniority.” Here, although it follows from the very restriction laying down equal distribution, that the mode of unequal division is to be rejected ; still the passage “there is no deduction for seniority,” is added in order to show that only the unequal distribution caused by seniority, &c., does not take place, but that there is certainly unequal division on account of the union of greater and less property.

Some, however, say that the unequal distribution owing to seniority, &c., must be made of the augmented portion (if any) of the re-united property ; but the division of the re-united property must be equal : with a view to indicate this the portion “there is no deduction for seniority”—has been added.

This is not tenable. For a distinction like this does not appear from the above text, since, from the passage “in that case the distribution shall be equal,”—it appears that the restriction as to equality is applicable to the accession also.

2. Just as in the partition of undivided property, so also in the partition of re-united property, the imparibility of what has been acquired by science, &c., without using re-united property, would equally have been the rule; but an exceptional rule has been laid down by Vrihaspati, thus,—“ But if any one of the re-united co-heirs acquire property by science, heroism, &c., two shares shall be allotted to him, the rest shall be equal sharers.”

3. Many are of opinion that re-union may be formed only with the father, &c., but not with any other, by reason of the text of Vrihaspati cited before, namely,—“ He, who being once separated dwells again through affection together with the father, brother or paternal uncle is called re-united.”

But we have shown at great length that the enumeration of the father, &c., is illustrative (not exhaustive).

4. Just as in the case of partition among undivided co-heirs, so also among those that are re-united, if any one die before partition is made, his sons shall take and divide amongst themselves their paternal share, by reason of the text,—“ Among those whose fathers are dead (different?) the allotment of shares is according to their fathers.”

But if any one of the re-united co-heirs die without leaving male issue, then the succession to his estate would have devolved on the wife, &c., by reason of the text,—“ The wife and the daughters also, &c.;” but in continuation of the passage “ of a sonless deceased person,” (occurring in that text) an exceptional rule is laid down by Yogisvara in the following text, namely,—“ But of a re-united (co-heir,) a re-united (coparcener shall keep the share, when he is deceased or deliver it if born).” The term ‘but’ shows that it forms an exception to what precedes. Thus the meaning is, that the estate of a re-united co-heir dying without male issue shall be taken by a re-united co-heir alone, and not by the wife or the like. Hence, Jímútaváhana must be considered to have erred, who interprets the text to be applicable when, among the series of heirs to the estate of a sonless person beginning with the wife, the brothers’ right takes effect.

To this rule again, an exception is propounded (in the latter part of the above text),—"But of a uterine brother, a uterine brother, shall keep the share when he is deceased, or deliver it if born." This is to be construed with the preceding portion, namely,—"Of a re-united, a re-united." Accordingly the meaning is as follows: A re-united uterine brother shall deliver the share of a re-united uterine brother, if born, *i. e.*, if he is born in the shape of a son, that is to say, shall deliver it to his son; or shall keep, *i. e.*, shall himself take the share (of a re-united uterine brother) when he is deceased, *i. e.*, not living even in the shape of the son, grandson, or great-grandson. If this text were interpreted without construing it with the two terms that precede, then it would be opposed to the fact of this text forming an exception to what precedes, which follows by force of the term 'but.' And it forms an exception to what precedes, in this way: when there are a uterine brother and a half brother both re-united, in that case the re-united whole brother alone is entitled to the property of a re-united uterine brother, and not the half brother.

When, however, a half brother alone is re-united, and a whole brother is not so, then they take in equal shares the property of a brother without male issue. This is declared (by Yogisvara) in the text,—"But a re-united half brother may take the property, not a half brother (not re-united); also the (brother) united (through uterus) though not re-united may take, not the (united) son of a different mother (exclusively)."—Here the term 'not re-united' is, like the eye of a crow, connected both with the preceding and with the latter part. So the term 'united'; and this term signifies, in the first part, united through the uterus, *i. e.*, a uterine brother; but in the latter part, re-united. The term 'exclusively' is to be supplied immediately after the term 'son of a different mother.' Hence the meaning of the text is this: A step-brother, though not sprung from the same mother, takes the property if re-united; but a step-brother does not take, if not re-united: therefore, by showing the existence and absence of re-union to be the cause respectively of the succession and non-succession of a half brother, what is

affirmed is, that the re-union of a half brother is the sole cause of his succession, and not his fraternity alone: likewise 'the united,' i. e., the uterine brother although not re-united succeeds, and *a fortiori* when re-united: and the son of a different mother, although united, i. e., re-united shall not exclusively take the property, but shall take together with a uterine brother though not re-united. The purport of the text is this: when the uterine brother is not re-united but the half brother is re-united, then because of the two attributes, namely, being a uterine brother and being re-united, each of which constitutes a cause of the right of succession, one is present in each, therefore both of them take in equal shares the property of a brother without male issue: should the uterine brother be re-united, then by reason of the combination of both the causes he becomes the preferable claimant, therefore he alone takes the entire estate.

Although by each of the restrictive rules laid down in the above texts of Yogisvara, the inefficacy of the other cause of succession is established, still for the sake of emphasis the same is expressed over again; for in both ways the same meaning may be expressed.

The masculine gender in the terms 're-united &c.' (in the above texts of Yogisvara) is not intended to be significant. Accordingly Manu declares the right of the uterine sisters also to succeed to the property of a re-united brother. Thus he, having premised partition among the re-united kinsmen, in the text,—“If those who are associated after separation make a partition again”—goes on to say,—“Of these, if the eldest or the youngest or any other be deprived of his share at the distribution, or any one of them die, his share shall not be lost; but his uterine brothers being assembled and united shall divide that equally; also brothers that are united and sisters born of the same mother.” The meaning is:—Among re-united brothers, if the eldest, the youngest or the middle-most, at the distribution, i. e., at the time of making a partition,—the termination of the word (*ansapradánatas*.) which denotes any case, denotes here the locative case,—be deprived, i. e., become disentitled by reason of degradation or adoption of an order other than that of the house-

holder, or dies before partition ; his share shall not be lost, *i. e.*, shall be set apart : but it shall be delivered to his male issue in the first instance : failing them, the uterine brothers though not re-united, being assembled, *i. e.*, if gone to a different country returning thence, united, *i. e.*, assembled together ; also brothers, *i. e.*, half brothers that are united, *i. e.*, re-united, and the uterine sisters of the deceased shall divide, *i. e.*, take it after division, equally, *i. e.*, without inequality. Here Manu by declaring the succession of the uterine brothers and sisters, even if they are not re-united, and of the half brothers in case they are re-united, clearly expresses the very same meaning as is declared by Yogisvara.

5. On this Sríkara says : When there are only re-united half brothers, then the precept, "But of a re-united (co-heir), a re-united (co-heir) shall keep the share, when he is deceased, or deliver it if born"—is independent of any other precept ; so is the precept, "But of a uterine brother, a uterine brother, &c.,"—when there are only uterine brothers not re-united : but, when there are both a re-united half brother and a whole brother not re-united, if the two precepts be applicable, then both precepts take effect dependently upon each other. But it is not right that the same precept be operative independently of, and dependently upon, another precept ; for in that case there would be variableness in the precept. Just as in the seventh chapter (of the Mímánsá) a different conclusion is made for fear of variableness in the precept, which would have been the consequence, had the operativeness of the precept, "in these two the holy fire is kindled"—been taken, in respect of the two of the four sacrifices, to be dependent on the option created by the prohibition embodied in the precept, "the holy fire-place is not made in the *vaisvadeva*, &c." ; but independent, in respect of the other two sacrifices. Accordingly, when there are a half brother re-united and a whole brother not re-united, neither of the precepts is applicable ; and it would follow that no one could take the estate (there being no provision for this case). Hence it is to be held that the right of a re-united co-heir to succeed to the

property of a re-united coparcener, being declared in the text,—“But of a re-united (co-heir), &c.,”—the latter part, *viz.*,—“But of a uterine brother, a uterine brother, &c.,”—is set forth as forming an exception to that. Hence it follows that a half brother though re-united has no right, when there is a whole brother although not re-united.

This assertion is the consequence of not studying the principles of the topics of construction contained in the Mīmānsā. For it is not correct, that there is variableness in precept, merely because two precepts, which are independently applicable to some cases, become both applicable to some other case where the subjects of both (the precepts) are combined. Since, if it were so, then the precepts enjoining the bestowal of the whole wealth as gratuity to the priest in the one instance, and no gratuity in the other, which are respectively applicable independently of each other, if either the priest called *udgátri*, or the one called *pratistotri*, singly stumble (in passing from one apartment to the other, at the celebration of the sacrifice called *jyotiṣṭoma*),—would not be applicable (by reason of variableness, such as is maintained by you,) if both those priests should stumble at the same time; so there would be no conflict, there being no two propositions opposed to each other; hence the discussion in the topic of stumbling (in the Mīmānsā), must be held to be uncalled for. Therefore the variableness in precept is, when a precept becomes operative in one instance, independently of any opposition of a different precept, and in another instance dependently of such opposition: as has previously (p.150) been illustrated by the instance of the precept,—“Here they construct the holy fire-place, &c.” Otherwise, neither of the two precepts, *viz.*, “Shall touch with the hymn called *chaturhotrā* at the full moon,” and “Shall touch with the hymn termed *panchahotrā* at the new moon”—(in which the burnt-offering is meant to be the object of touch),—which are severally applicable to the sacrifices called *upánsu* (which takes place at the full moon) and *agnisomiyā* (which takes place at the new moon) in the first of which the burnt-offering is curd consecrated to Indra, and in the second, milk consecrated to Indra,—would be applicable to a sacrifice which takes place both

at the full moon and at the new moon, although the burnt-offerings are combined.

As for his own interpretation, namely, that the rule,—“But of a uterine brother, &c.”,—is an exception to the rule,—“But of a re-united, &c.”:—that is extremely incongruous. For the converse (of the proposition that one is an exception to the other) may as well be asserted, there being no criterion for determination; and the mere fact of the one being placed after the other cannot lead to that conclusion. Again, the text,—“But a re-united half brother, &c.,”—has been said (by Sríkara) to be explanatory of the text,—“But of a re-united (co-heir), &c.” But to say this, is to say that that text is useless. Besides, the text,—“But of a uterine brother, &c.,”—being explained (by Sríkara) to exclude a re-united half brother when there is a whole brother although not re-united, it is not applicable to the case where both a whole brother and a half brother are not re-united; consequently neither of them would be heir, or both of them would be equally entitled. If it be said that the very text,—“But of a uterine brother, &c.,”—is applicable to this case also, then the objection of variableness in the precept may be retorted on you; for, in one instance it becomes operative dependently of opposition of the text,—“But of a re-united (co-heir), &c.,”—and in another instance, independently of such opposition. Just as, if the precept directing the construction of the altar at a sacrifice with the *soma* plant, were applicable to the *dikshaniya* and the like sacrifices (which are performed at the full moon and the new moon and in which *soma* is employed), in opposition to the precept which generally directs the construction of an altar in the *darsapurnamása* sacrifice performed at the new and the full moons, and which extends to the above mentioned sacrifices, which are parts of that sacrifice; then that precept would be operative in those sacrifices dependently of opposition of the extending precept, and in others independently thereof: so there would be variableness in the precept; hence it has been concluded that the precept applies to those sacrifices with reference to which there is no other precept directing the construction of an altar.

But agreeably to the mode of interpretation adopted by us, the subjects of the two rules (of Yogisvara) being different, the objections of uselessness and of variable-ness in precept cannot arise. There is no use in spinning out the matter.

6. The author of the Smritichandriká, however, says :—It appears from the terms ‘also’, ‘being assembled’ and ‘united’ in the text of Manu, viz.,—“Of these, if the eldest or the youngest &c.”—that the uterine brother and sister and the re-united half brother are jointly entitled to succeed : but it appears from the text of Yogisvara, that a half brother is not entitled to succeed when there is a re-united whole brother : hence there is a conflict between these two texts. With a view to avoid this conflict, some explain the text of Manu in the following way: That unlost share shall be taken by those uterine brothers alone that are re-united, and not also by such uterine brothers as are not re-united ; failing a re-united whole brother, all the uterine brothers, ‘being assembled’, *i. e.*, meeting together, and ‘united’, *i. e.*, with equal prominence, shall divide it ‘equally’, *i. e.*, in equal shares ; in default of the uterine brothers, the uterine sisters ; and in their default, the half brothers. This interpretation is to be rejected, as in it many terms are to be supplied (which are not in the text) and as it is far-fetched. Vijnánesvara has, in order to make the two texts consistent with each other, adopted a different reading of the text of Yogisvara, namely,—“ But a re-united half brother may take the property, not a half brother (not re-united)” ; but nevertheless, the interpretation put by him is evolved out of his inner consciousness, for it is a forced one, by reason of the supply (of a term not in the text) and of the construction of the same term with different sentences, and is very obscure. Hence a reconciliation of the texts of Manu and Yogisvara, as bearing only the plain meanings, is to be effected only by referring them to different cases, and not by ringing changes upon the words (of the one text) to give out the same meaning (as the other). The same we proceed to show. The text of Manu shows the joint succession of brothers, whether re-united or not, and of sisters,

when the estate consists of both moveables and immoveables: but the text of Yogisvara refers to a case when the estate consists of immoveables only, or of moveables only. This follows from the text of Prajápati, viz.—“ But when the estate consists of chattels and other property it goes, however, to the re-united ; but the land and house shall be taken by the unassociated (whole brothers ?) according to the share.”—The term ‘chattels,’ by the rule of ‘the bulls and the beeves,’ signifies bipeds, quadrupeds and the like; ‘the re-united’ means, the re-united half brothers. The correct reading of the text of Yogisvara is, “ A half brother though re-united does not take the estate of a half brother.” Hence, when there is only immoveable property or only moveable property, then, by reason of the text of Yogisvara, a uterine brother though not re-united takes, but not a half brother though re-united : when, however, there are both kinds of property, then agreeably to what is laid down in the text of Prajápati, the unassociated uterine brother and sister as well as the re-united half brother take in equal shares. This also is the meaning of the text of Manu.

This is not good. Since the defects of insertion (of terms not used in the text), forced construction &c., are not wanting in the interpretation put by you ; and what is declared in the text of Prajápati is not in conflict with the interpretation put by Vijnánesvara (on the text of Yogisvara). Accordingly the author of the Madanaratna, adopting this interpretation, cites this very text of Prajápati in support of it. But agreeably to your interpretation, there is rather the defect of tautology unavoidable in the text of Yogisvara, for (agreeably to your reading) it is in the first part said—“ A half brother though re-united does not take the estate of a half brother,”—and the very same thing, neither more nor less, is expressed in the last part, namely,—“ not the re-united son of a different mother.” And although an interpretation involving the defect of tautology, might even reluctantly be accepted for the purpose of making the text consistent with the text of Manu ; still it would be improper to adopt a meaning which is liable to the objection of multiplicity for assuming another radical revelation.

7. Súlapáni, in his commentary on the Institutes of Yájnavalkya, says (while interpreting the above texts which are read by him in a different way):—A half brother though re-united shall not take the property of a half brother; the uterine brother alone though not re-united shall take, but not a re-united half brother. If the reading be, “But a re-united half brother may take the property, not a half brother,” then the meaning is that a half brother being a half brother, may not take the property though re-united. This text shows the succession of an unassociated whole brother, hence there is no defect of tautology.

This, however, is of the same nature with what is said by Sríkara. The author of the Ratnákara, however, says that the reading (of the text of Yájnavalkya), as found in the Kalpataru, is “shall not take the property of a half brother,” but this must be a copying mistake, inasmuch as the reading found in the copies of the Institutes of Yájnavalkya, and in the commentaries such as the Mitákshará, the Párijátá and the Haláyudha, is—“not a half brother, may take the property;” and the interpretation of that text, (in these commentaries), are in accordance with that reading.

8. The author of the Dayatattva, however, says :—“ But when there are a half-brother re-united, and a uterine brother not re-united, and when there are a whole brother and a half brother both re-united : then two questions arise, which of the two is to succeed in each case.

“As to the first, it is said ‘A half brother &c.,’ which signifies; let a half brother, if re-united, take, but not a half brother merely as such: but a uterine brother though not re-united may take; for the term, ‘uterine brother,’ which occurs in the preceding text is also to be construed with the latter proposition. Therefore when there are an unassociated uterine brother and a re-united half brother, they both succeed; because the equality of the relation of re-union, and of the status of a whole brother, is expressed by the first part of the text.

“As to the second, it is ordained ‘and not the son of a different mother who is re-united,’ the meaning is that

when there is a whole brother re-united, the son of a different mother, though re-united shall not take, *i. e.*, the re-united whole brother alone shall succeed; since though they are equally re-united, still the whole brother as such is preferred."

This is in conformity with what is said in the Mitákshará and the like, but it discloses great want of skill in interpretation.

9. The authors of the Smritichandriká and the Madanaratna say:—When, however, the father or the uncle is not re-united, then the unassociated half brother succeeds; in his default, however, the unassociated father; failing him, the wife. Accordingly Sankha says—‘The wealth of a sonless person who departs for heaven, goes to the brothers; in their default, let the parents take, or the senior wife.’ The meaning is,—‘The property of a deceased sonless re-united (person) goes, in default of a re-united (coparcener) to an unassociated half brother. Hence this text may also, as it is, be relative to the estate of a re-united person.

The author of the Mitákshará and others say that this text refers only to re-union, consequently there is no inconsistency in the succession of the parents and the wife on failure of the brothers.

It is stated in the Smritichandriká:—The term ‘senior’ has been employed in the text of Sankha for the purpose of indicating the possession of virtues such as the control of passions, not for the purpose of excluding the middlemost or any other junior wife. The term ‘in their default’ should have been used over again, but in its stead, the particle ‘or’ has been used, for the effect is the same. Since, the term ‘or’ marks an alternative; but in the present instance there cannot reasonably be an alternative with reference to the ownership which is a determinate thing; for it is a rule laid down by the Sástras, also established by reason, that ‘An indeterminate affirmation is not made with reference to a determinate thing’; therefore, here the term ‘or’ indicates an alternative with reference to ‘default’; hence the result is the same. Accordingly the order is this: in default of the brothers,

the father; in his default, the mother; in her default, the senior wife.

In the Madanaratna, however, it is said that the mother succeeds in the first instance; and then the father. The intention being, that it follows from the principle set forth in the Mitákshará, there being no text against the application of that principle to the present case, like the text of Vishnu relative to the estate of a person separated and not re-united. Accordingly, on account of the text of Vishnu it has been held in that treatise, in the same way as in the Smritichandriká, that the term ‘parents’ in the text,—“The wife and the daughters also &c.,”—means that the father succeeds in the first instance, in his default the mother. We have already dealt with this at great length.

Hence it appears that the above text of Sankha being in conflict with the text,—“The wife and the daughters also &c.,”—is taken to be relative to partition after re-union, in order to avoid the conflict. The order of the heirs, which is laid down in the text, “The wife and the daughters also &c.,”—and which is founded upon a principle and is relative to separate property,—is opposed by the order laid down by texts of law with reference to the present case. In this order, there is no principle; hence this order rests entirely upon the authority of the texts of law. Also Nárada says,—“But when the husband is dead, the wives, who are destitute however of (the husband’s) brother, father and mother, and all the *sapindas* shall divide the (whole re-united) property agreeably to shares.”—The meaning of this text is:—‘The wives’ (*bháryás*) i. e., the *patnis*; ‘who are destitute of brother, father and mother,’ means, in case the brother father and mother of the husband do not exist. By deviating from the rule regarding the conjunctive compound, agreeably to which the father and mother who are entitled to greater respect than a brother, ought to have been placed first in the compound *abhrátri-pitri-mátrikás* (rendered above into ‘destitute of brother, father and mother,’) and by combining the words in the reverse order, Nárada intended to show that the estate of a re-united sonless person goes to the brother in the first instance, in their default to the father, in his default to

the mother, and in her default to the virtuous wife. Thus it is to be observed that the wife of a re-united person succeeds first, not in default of the legitimate and the subsidiary sons (only) but on failure also of re-united (coparceners,) whole and half brothers, father and mother. The meaning of ‘all the *sapindas* &c.’ is this; those other than the brothers, father and mother, who are *sapindas* of a re-united person destitute of male issue,—such as the brother’s sons &c.,—shall, on his death, divide their own property which was re-united by their father and the like with the property of that sonless person, with his wives, ‘agreeably to shares’, *i. e.*, allotting the brother’s share to the nephews and the husband’s share to the wives, and so not modifying the shares.

10. On failure of the wife, the sister gets the share of a sonless re-united person. Thus it is ordained by Vṛihaspati,—“ But if there be a sister, she is entitled to get a share of it, this is the law regarding the estate of a person destitute of issue, also destitute of the wife and the father,”—the term ‘also’ (*cha*) suggests, “ also destitute of the mother.”

11. On failure of the sister, the mere (*i. e.*, unassociated) *sapindas*, that is, the nearest *sapindas* shall divide the estate left by a re-united person, agreeably to shares, *i. e.*, shall get the estate in the order of propinquity as declared by Manu in the text,—“ To the nearest *sapinda*, the inheritance next belongs;” since the order of succession among these has not been expressly declared. Thus the same sage (Vrihaspati) declares,—“ If the deceased have no issue, nor wife, nor brother, nor father nor mother, then all the *sapindas* shall divide his property agreeably to shares.” “ His property” signifies the property of a re-united person; “ If the deceased leave no issue &c.,” means, if the deceased be destitute of those (heirs) the order of whose succession to the re-united estate has expressly been declared.

But it is to be observed that in default of the *sapindas* the estate of a re-united person, like the estate of a person separated, goes on his death to the *samanodakas* and the

like in the order previously mentioned agreeably to the degree of propinquity. For there is no special text of law relative to the re-united estate, declaring the order of succession on failure of the *sapindas*.

12. If it be argued that as by reason of the text a re-united brother and the like succeed to the estate of a re-united person in spite of the wife and the like, so by virtue of the same text the re-united sons alone should inherit the estate of the father when there are both re-united and unassociated sons. The answer is that the argument is not tenable : since the term 'sonless' occurring in the previous text, is to be construed with this text ; hence the death of a re-united person *without male issue*, is the cause of the succession (of a re-united co-heir) ; therefore when a re-united person leaves male issue, then the text,—“But of a re-united (co-heir) &c.,”—cannot apply, since the circumstance of his being without male issue is wanting ; consequently, in this instance too, both descriptions of sons are equally entitled to take the father's share by reason of the text,—“The sons shall on the demise of the parents, divide their estate and debts in equal shares.” But only whatever remains after the enjoyment by a person re-united with his son, of that share which was previously allotted to him (on partition,) shall be separately adjusted ; *i. e.*, whatever share would belong to the father at the time, shall be taken by the sons, dividing the same. Nor can it be contended that let not the term 'sonless' occurring in the previous text be construed with the text,—“But of a re-united (co-heir) &c.” Because it would follow that even as regards the property of a re-united brother or the like who is not without male issue, his brother or the like will take his share to the exclusion of the male issue ; and this would be opposed to the immemorial custom of all countries. And because if the text “But of a re-united &c.,” were relative without distinction to a person who has male issue as well as to one who is destitute of male issue, then this text could not reasonably be said to form an exception to the text,—“The wife and the daughters also &c.,”—which is relative only to a person destitute of male issue ; consequently the above conten-

tion is contrary to the term "but" which marks an exception. Nor can it be argued (admitting the construction of the term 'sonless' with the text regarding re-union) that agreeably to the rule laid down by the learned, namely, "An adjective becomes significant if it may reasonably be applied, and if without it there would be inclusion of things not intended to be included,"—this adjective (properly) refers only to one who is re-united with a brother or the like, for it becomes exclusive; and not to one who is re-united with his son, for as that which is to be excluded is wanting, its application would be unreasonable. Because in the absence of two separate propositions if the precept embodied in one proposition be operative sometimes in connection with the adjective and sometimes without it, then in consequence of the two-fold meaning of the same proposition caused by its construction and non-construction with the adjective, there would be variableness in the proposition consisting in the variableness in the precept. Besides, ownership in the property of the father or other ancestor is to be held to be caused by sonship &c., alone, if not attended with degradation and the like disqualification, but not also if attended with re-union; by reason of multiplicity: and as the sonship &c., belong equally to all (the male issue,) whether re-united or not, therefore the succession, to their property, of all the sons and the like without distinction is proper. Nor can it be said, that right (of the sons &c., as such) to the property of the father and other ancestors, ceases by partition. Because (if that were so) then it would follow that when all the sons are separated and not re-united, then the wife &c., will become heirs as in default of male issue; and because the right of the father and son to each other's property is on the contrary laid down by A'pastamba and Hárīta, thus they say,—“(The father) may, in his lifetime divide the property and retire to a forest or adopt the order befitting an old man or may divide a small portion and retain the greater portion himself; and if he be pinched, may resume from them.”—“The order befitting an old man,” means mendicancy (or the fourth order of life); ‘be pinched,’ means, be reduced for want of food.

But if a son be born after partition, then (agreably to what is said above, also) the sons who have been previously separated would have been entitled to the father's property, but they are debarred by the text of Vrihaspati, namely,—“Those born before partition are not entitled to the share of the parents ; nor one born after it, to the share of a brother. Whatever is acquired by a father separated from the son, belongs entirely to one born after partition ; those born before partition are declared to be not entitled. As in the property so in debts also, in gifts, pledges and purchases, they have no claim on each other, except for acts of mourning and libations of water.”

13. The heir to the estate of a re-united person must maintain his wives and support his daughters till they are married as well as perform the ceremony of their marriage. This is declared by Sankha and Náraṇa after premising re-union,—“If any one of the brothers without issue die or enter a religious order, let the rest divido his wealth, excepting the wife's separate property. Let them allow a maintenance to his wives until the end of their lives, provided they preserve unsullied the bed of their husband ; but if they behave otherwise, the brothers may resume their allowance. If he leaves a daughter, her paternal share is ordained for maintenance, she shall get her portion till marriage ; afterwards the husband shall maintain her.”—“If they behave otherwise” means, if they do not preserve unsullied the bed of their husband, *i.e.*, if they be of bad character; the prefix *ā* in *āsanskárát*, (rendered into ‘till marriage’,) signifies inclusion, hence the celebration of marriage also is included.

Thus ends the partition of re-united estate.

## CHAPTER V.

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### WOMAN'S PROPERTY.

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#### PART I.

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§1.—Woman's property enumerated. 2.—The term *stridhanam* bears no technical meaning. 3.—The terms 'gift before the fire' &c., explained, 4.—The amount of maintenance allowed to females. 5.—The power of females over their property. 6.—Males have no power over woman's property ; maintenance may be exacted by the wife, if not wicked. 7.—Husband's power over the wife's property in the event of distress. 8.—What was promised by the husband to his wife must be given by his sons ; sons cannot divide the mother's property during her life.

1. Now, with a view to explain the partition of *stridhanam* or *woman's property*, its nature is first determined.

On this Manu says,—“ What is given before the (nuptial) fire, what is presented in the bridal procession, what is bestowed in token of affection, and what is received from the brother, the mother or the father ; these six-fold are declared to be *stridhanam*.”—The term ‘six-fold’ is intended, not as a restriction of a greater number, but as a denial of a less. Accordingly Yogisvara uses the term ‘the like’ in the text,—“ What is given by the father, the mother, the husband or the brother, what is received before the (nuptial) fire, what is presented on the husband's marriage to another wife, or the like, is pronounced to be *stridhanam*.” Also, Vishnu declares more than six sorts of woman's property ; thus he says,—“ What is given by the father, the mother, the son or the brother, what is received before the (nuptial) fire, what is presented on the husband's marriage with another wife, what is given by the *bandhus* or relations, and *anvádheyakam* or a gift subsequent to marriage ; these are denominated woman's property.” Náraṇa says,—“ What is received before the (nuptial) fire,

what is presented in the bridal procession, likewise a gift by the husband, what is given by the brother and the parents; these six-fold are declared to be *stridhanam*.”—The term ‘six-fold’ is to be explained in the same way as in the text of Manu.

2. The term *stridhanam* or woman’s property has been used (in the above texts) in its ordinary meaning, *viz.*, property whereof a woman is the owner, and not in a technical sense (as including only the enumerated items of property;) for when the ordinary meaning is acceptable, it is not proper to adopt a technical meaning. Accordingly Yogisvara has employed the term ‘the like’ on purpose to include what is acquired by the common means of acquisition, such as inheritance, purchase &c.

If it be said :—If it were so, then the exclusion of certain kinds of property from the category of woman’s property would be unreasonable; for, a woman’s ownership therein cannot be denied by reason of contradiction (with the above exposition;) thus, Kátyáyana says,—“Among these, what is given conditionally or what is given under collusion by the father, brother or husband; that is not denominated woman’s property.” ‘Condition’ is the restriction that this ornament or the like, which is given to you, is to be put on by you only on days of festivity &c., and not at any other time; what is given with such a restriction is “given conditionally.” “under collusion” means, with the intention of defrauding the co-heirs,—(as if saying)—‘This has been given to a maiden daughter, how can such property be partible?’ It is also said by the same sage that what is acquired by means of mechanical arts, also what is presented out of affection by a friend or the like does not become woman’s property, thus,—“But whatever is acquired by means of mechanical arts, also what is received through affection from any other; therein the husband’s ownership arises at that time; the rest, however, is pronounced woman’s property.” It is upon the assumption that the term *stridhanam* is technical in its meaning, that what would, by reason of being given by a brother &c., be included by the term *stridhanum* is excepted (in the first of the above texts;) hence a technical meaning is intended

(by the above two texts) to be attached to the term woman's property, *viz.* that *stridhanam* means what is given by the father or the like excepting that (which is mentioned in the first of the above texts) or excepting what is gained by mechanical arts and the like (mentioned in the second text.)

The answer is : In the above texts the denial is, not of their being woman's property, but of its consequences, such as distribution (by her choice amongst her heirs,) &c. Accordingly in the latter text it is said, "therein the husband's ownership arises." The meaning is that the husband and not the woman has independence in dealing with such property. In the first text, however, the denial also of the woman's right is possible, by reason of the employment of the terms 'condition' and 'collusion'; and it is universally known that no right accrues to such gifts, by reason of the text of Manu, namely,—“Collusive mortgage and sale, collusive gift and acceptance, and wherever a condition (or fraud) is found; all these shall be prevented.” The following text (of Manu,) namely,—“A wife and a son, also a slave; these three are incapable of holding property: whatever they acquire belongs to him whose they are,”—is to be taken to refer, in the case of a wife, only to what is acquired by mechanical arts &c., by reason of the simplicity of the supposition that both the precepts are founded on the same radical revelation.

3. The terms 'gift before the nuptial fire,' and the like are explained by Kátyáyana, thus,—“What is given to women at the time of their marriage, near the nuptial fire, is proclaimed by the wise as the woman's property given before the nuptial fire. That again, which a woman receives while she is conducted from her father's house (to her husband's dwelling) is declared as woman's property under the name of gift presented in the bridal procession. Whatever, however, is given through affection by the mother-in-law or the father-in-law, or what is given on obeisance by touching the feet (of a woman,) is called an affectionate gift. Subsequent to marriage, however, what is received by a woman from her husband's family is called a gift subsequent, and so is what is like-

wise received from her own family. Whatever, however, is received as a price of household furniture, conveyance, milch-cattle and ornaments, is denominated fee or *sulka*. That which is received by a married woman or by a maiden in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."—The reading (of the text defining a kind gift) as adopted in the Kalpataru and other works, is "from her husband" (instead of 'from her brother.') The terms 'presents before fire,' &c. although they convey their derivative meaning, are still technical, inasmuch as they are applied only to the above descriptions of woman's property. It has been explained in the Madanaratna, that the price of household furniture &c., which is taken from the bridegroom or the like for giving (in marriage) the bride, in the shape of the bride's ornaments, is the fee or *sulka*. In the Mitákshará, however, it is said, that the fee or *sulka* is that which having been taken, the bride is given in marriage. But in both (the books), it is intended that the father or the like takes it on the understanding that it is to belong to the bride; because, otherwise, in the absence of her right thereto, the application of the denomination of woman's property to it, would be unreasonable. But Jimútaváhana having adopted a reading (of the above text of Kátyáyana, defining the fee or *sulka*) in which there is the word *karmánám*, workmen, instead of *karmanám*, acts, has explained the text in this way: "In order to have a work done by workmen on houses &c., i. e., by artizans, what is given as a bribe to a woman for inducing her husband or others (of her family who are the artizans), to do the work, is the fee or *sulka*. This itself is the price, as it is paid for her inducement." He has further said,—"Or the fee is what is described by Vyása in the text,—'What is given to bring her to her husband's house is called the fee or *sulka*.'—The meaning is, that what is given by way of bribe or the like, to induce her to go to her husband's house is the fee or *sulka*." Both these descriptions of property belong to the woman, for to her alone they are given; hence it is easy to understand the application of the name 'woman's property' to these, in the same way as to other kinds of woman's property.

A gift on supersession (*adhivedanikam*) is what is bestowed on the first wife on the occasion of espousing another wife. This is described by Yájnavalkya, thus—"To a woman whose husband marries a second wife, let him give an equal sum as a compensation for supersession, if woman's property have not been given to her; but if any have been assigned, let him allot half."

4. Kátyáyana lays down a special rule regarding the grant of property by the father or the like, to females for their maintenance :—"The father, the mother, the husband, the brother or the *jnátis* or kinsmen of the same family, shall agreeably to their means, give to women *stridhanam*, not exceeding two thousand, excepting immoveable property."—The meaning is, that property other than immoveables, extending to two thousand *kárshápanas* shall be given according to the means. So also Vyása declares,—“But an allowance of property amounting to two thousand at the most shall be given to a female.” Kátyáyana by the term ‘not exceeding two thousand,’ and Vyása by the term ‘at the most,’ show that even a rich man is not to give more to women (whom he is bound to maintain). This restriction, however, is to be understood to apply to what is given every year, and not to an allowance once for all. Hence there is no incongruity, if the property given for maintenance for many years exceed this amount; for it is for maintenance that the gift is made, but it is not possible that that for the whole life can be covered by merely two thousand (*kárshápanas*).

5. In the disposal of woman's property, however, females have not independence without the permission of their husband. This is declared by Manu thus,—“Women shall not make any disbursement out of family property which is common to many, or even out of their own property without the permission of their husband.”—Disbursement (*nirhára*) means, expenditure.

But in the disposal of some kinds of woman's property, females have independence; this, Kátyáyana having described a kind gift, declares thus,—“The independence of women who have received a kind gift, is admitted (in

respect of it,) for it was given by them out of kindness, for their maintenance. With respect to a kind gift, the independence, at all times, of women is proclaimed in making sale or gift according to pleasure, even when it consists of immoveable property."

But as regards property given by the husband, they have independence in dealing only with property other than immoveables. This is declared by Nárađa, thus,— "What has been given by an affectionate husband to his wife, she may, even when he is dead, consume it or give it away as she pleases, excepting immoveable property." The meaning is, that the wife can only enjoy the immoveable property given by the husband by dwelling on it, &c., but cannot make a gift, sale, or the like. Some are of opinion that the text of Kátyáyana also, *viz.*—"Let the sonless wife, preserving unsullied the bed of her husband &c."—refers only to immoveable property given by the husband, since (if interpreted in this way) it embodies the same precept as the text of Nárađa. But what it refers to, has been discussed by us while explaining the text,— "The wife and the daughters also, &c." (p. 136 *et seqq.*).

6. The males (of the family), however, have no power of disposal over any kind of *stridhanam*, inasmuch as they have no ownership in it: this is declared by Kátyáyana,— "Neither the husband nor the son nor the father nor the brothers can assume the power over a woman's property to take it or give it away. If any of these persons forcibly consume a woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such a person having obtained her consent amicably, consume her property, he shall be required to pay the principal, when he becomes rich (enough to pay it). But if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due supply and take a share (of the estate) with the co-heirs."

The meaning of the two couplets beginning with "But if the husband," is this: if the husband having taken the

wealth of one wife lives with another wife and neglects the first, the king shall forcibly compel him to restore that wealth ; and if the husband does not supply her with food, raiment and dwelling, then these also or property sufficient for these, may be forcibly exacted by the wife. This also is to be understood to take effect when she is blameless ; for a wicked woman is not entitled to obtain any sort of woman's property whatsoever, as is declared by the same sage,—“ But a woman who is inimical, shameless, dissipator of wealth, or adulterous is not worthy of woman's property.”—By the expression ‘is not worthy’, it is indicated that what has been received by her may be forcibly taken from her : ‘inimical’ is one who is always engaged in committing acts against the will of the husband,—another reading is ‘impudent’ (*nirmaryádá* instead of shameless).

7. Devala says,—“ Her subsistence, her ornaments, her fee or *sulka*, and her gains are the separate property of a woman. She herself exclusively has the right to enjoy it, her husband has no right to use it, except in distress. In case of consumption or disbursement without cause, he must refund it to the wife with interest.” ‘Subsistence’ or *vṛuddhi*, means, according to the Smritichandrika, what is given by the father or the like (relation) towards her advancement. In the Madanaratna, however, this is read as *vṛitti*, and is explained to mean what is given by the father or the like for subsistence. ‘Gains’ signifies what is received from any person, who makes the present for the purpose of pleasing Gauri or some other goddess : ‘without cause’ means, otherwise than in distress : ‘disbursement,’ means abandonment, *i. e.*, giving away ; this is relative to gift and enjoyment that are not permitted by the wife, but if she permits, there is no fault even when there is no distress : the term ‘exclusively’ in the passage ‘she herself exclusively’ is intended to exclude her children ; because the husband's exclusion is laid down by the passage ‘her husband has no right to use it,’ and because the husband being excluded, the exclusion of the brother and other relations who are more distant than the husband is, by the rule of the staff and the cake, established. From the

phrase 'except in distress,' it appears that there is no fault (if the wife's property be used) in distress; hence the same sage declares in the concluding text,—“Is entitled to use woman's property, also for the relief of the distress of the son.”—The term husband (occurring in the preceding text) is to be construed with this text. The term ‘son’ is intended to indicate the family; the meaning is, for the relief of the distress, *i. e.*, the pain caused by the want of food &c., of the family. The term ‘also,’ shows that the husband is entitled to give away or consume the wife's property without her consent, in any other difficulty caused by the want of money.

If it be said: How can it be shown by this text that a person is entitled to give away or consume another person's property without the consent of the owner; for it would be a contradiction in terms: in the case of consent, however, there is no difficulty although there be no distress. The answer is, that by virtue of the texts (to that effect it is to be admitted that) he has ownership itself over such property to use it for such purposes; so there is no defect. Accordingly Yogisvara says,—“A husband, if unwilling, is not liable to make good the property of his wife, taken by him in a famine or for the performance of some religious duty or during illness or while under restraint.”—‘For the performance of some religious duty,’ means, for the performance of necessary, daily or occasional, ceremonies; ‘while under restraint’ means, while arrested by the king for the levy of a fine or the like: but Váchaspati says that the term *sampratirodhake* (rendered into ‘while under restraint’) is an adjective qualifying ‘illness,’ and that it means preventing the pursuit of avocations. Also, the proposition, “if unwilling, is not liable to make good”—is to be understood to refer to the case of inability to refund on account of poverty and the like; but if he is able to repay, then even what is taken in a famine and the like, must be refunded: when this text may reasonably be interpreted in this very way, it would be improper to maintain that he may choose not to refund even if he is able to do so. As the term ‘husband’ is used in the text, therefore it is to be known that even in the event of distress the husband alone but no other

(relative) has the right to take a woman's property and to repay it at his desire.

8. What the husband promised to give to his wife must, when he is dead, be given to her by the son and the like. This too is declared by the same sage,—“Property promised by the husband to his wife must be paid by his sons, just as his debts.”—The term ‘sons’ includes grandsons and great-grandsons, by reason of the expression ‘just as his debts.’ By this it is shewn that although the right of the sons accrues to their mother's property by birth, still there can be no partition, while she is alive.

Thus woman's property has been described.

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### P A R T I I.

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§ 1.—Joint succession of sons and daughters to gift subsequent and affectionate gift of husband. 2.—Maiden daughters succeed to *yau-taka*. 3.—Daughter's succession to other kinds of property in preference to sons. 4.—According to Jímútaváhana this refers to *yau-taka* only. 5.—But according to Vijnánesvara, this refers to every description of property. 6.—Latter's argument criticized by Jímútaváhana. 7.—Criticism by the author. 8.—The daughter's daughters and sons. 9.—15.—Succession to property of a childless woman. 9.—Succession of husband and parents according to form of marriage. 10.—Jímútaváhana's opinion criticized. 11.—Brothers' succession to gift of parents. 12.—*Sulka* goes to uterine brothers. 13.—Gift of *bandhus* goes to *bandhus*. 14.—Of other heirs. 15.—Females not expressly mentioned, cannot succeed.

1. Now, the partition of woman's property is explained.

On this Manu says,—“ But when the mother is dead, all the uterine brothers and the uterine sisters shall equally divide the maternal estate.” Since in this text the term ‘and’ is used which conveys the same meaning as the conjunctive compound, therefore it is shewn that the uterine brothers and sisters are jointly entitled to take the mother's estate. The term ‘uterine’ is used to debar the children of a different mother.

Devala says,—“A woman's property is common to sons and maiden daughters, when she is dead ; but if without leaving issue, let her husband, mother, brother or father take it.”—In this text, however, the conjunctive compound itself (of sons and daughters, *viz.*, *putra-kanyánim*) is used, hence the joint succession of sons as well as daughters is clear.

But this (joint succession of the son and daughter) is relative to two descriptions of woman's property, namely, the gift subsequent and what is through affection given by the husband. Accordingly Manu himself says,—“The gift subsequent and what has been given by the affectionate husband ; these become the property of the children of the deceased woman though the husband is alive.”—‘The gift subsequent’ as defined before, also what has through affection been given by the husband ; ‘these’ descriptions of a woman's property belong to ‘children,’ *i. e.*, sons and daughters of the deceased woman. ‘Although the husband is alive’ means, in spite of the surviving husband : since the locative case in ‘*patyau*’ (husband) is indicative of disregard. The term ‘children’ in this text being used without any qualification, the co-equal ownership of the male and female children is expressed ; hence they are to take the maternal estate in equal shares : not, however, the sisters in the first instance ; in their default the brothers.

‘The sisters’ in the text of Manu (para. 1) are to be taken to be unmarried. Accordingly Vrihaspati says,—“A woman's property appertains to her issue, the daughter also is a sharer of it ; but when there is an unmarried daughter, the married one obtains a mere token of respect.”—The term ‘issue’ means, sons ; since ‘the daughter’ is separately mentioned : ‘sharer of it’ means, an equal sharer with a son : ‘a mere token of respect’ means that she obtains something, as a token of respect (due to her), in proportion to it, but not an equal share with a son.

In default of the unmarried daughters, the married ones also, whose husbands are alive, participate with their brothers. This is declared by Kátyáyana,—“The sisters whose husbands are alive shall succeed together with their brothers.”

At the time of partition something should be given also to the daughter's daughters. Accordingly Manu says,—“If there be daughters of the daughters, to them also, according as they deserve, should be given through affection, something out of their grandmother's property,”—‘according as they deserve,’ means, regard being had to propriety and to poverty and the like. Nor can it be argued that as the daughter's daughters have not then any right, wherefore is anything to be given to them? Since, just as in the case of paternal property, although the daughters have no right of inheritance when there are sons, still a quarter share is to be allotted to them by virtue of texts; the same reason holds good in this instance also. Accordingly the term ‘through affection’ is used. The distinction is, that in the present instance it being declared that the gift is to be made through affection, it is also indicated that it is optional; but in the other instance, the allotment is compulsory by reason of the expression of censure in the text,—“those that are unwilling to give become degraded.”

2. But the *yautaka* property (the nuptial presents) of the mother belongs to the maiden daughters alone; not to sons nor to married daughters. This is declared by Manu himself,—“But the *yautaka* or the nuptial present of the mother is the share of the unmarried daughters alone.”

According to the root *yu* to unite, whatever is, at the time of marriage, given to the bride and the bridegroom sitting upon the same seat, is called *yautaka* through the derivation, ‘what belongs to the *yulau* (or the two united) is *yautaka*.’ But some (commentators, among whom the author of the Dáyabhága is one) maintain that on marriage the corporeal union of the man and wife takes place, by reason of the Sruti, namely,—“(His) bone (becomes identical) with (her) bone, flesh with flesh, skin with skin,”—the meaning of which is, that the bones and other parts of the husband and wife become one. Others (among whom the author of the Dáyatattva is one) say that on marriage the union (of the husband and wife) arises, since it is indicated in the text (which the bride and the bridegroom are made to recite at the time of the marriage,) namely,—

"What is thy heart, let that become mine, what is my heart let that become thine." In the Nighantu it is said 'What belongs to the two united or *yuta* is *yautaka*.' The term is also read as *yautaka*, since it is stated in the Kosa (or authoritative vocabulary,)—"What is *yautaka* is also *yautaka*." Devasvámin says: The property of the mother which was received by her in the house of her father is called *yautaka*, such property being distinct from what was received in the house of her husband; since the term *yauta* signifies also disunion; as it is said in the Dhátupátha that 'The root *yu* means, to unite or to disunite,' and it is used in this sense, thus, 'on completion of the *yuta* or disunion.' This, (*i. e.*, what is said by Devasvámin) is not good. For it is merely an assumption, inasmuch as there being no criterion for determination, it may equally be said that the term *yautaka* means the property received in the husband's house, such property being distinct from what is obtained in the father's house.

When there are more than one maiden daughter, then agreeably to the maxim, 'Equality is the rule where no distinction is expressed,' their shares must be equal, no distinction being expressed.

3. The property of the mother excepting these three kinds, (*viz.*, gift subsequent, affectionate gift of the husband and *yautaka*) devolves on her daughters (in the first instance and not on her sons.) Amongst them also, first on the unmarried daughters; in their default, on those that are married: amongst these also, first on those that are unprovided; on failure of them, on those who are provided, and whose husbands are living; failing them, on the widowed ones. Accordingly Gautama declares,—"A woman's property goes to her daughters, unmarried and unprovided."—It is explained by Aparárka and the author of the Kalpataru that 'unprovided' means childless, indigent, neglected (by the husband) or widowed. Vijnánesvara and others attach to the term the first two of the above meanings. In this text also although the general term 'woman's property' is employed, still it is to be taken to refer to property other than the three descriptions mentioned above. This is said also in the Smritichandriká and the Madanaratna.

4. But Jímútaváhana and Raghunandana maintain that the text of Gautama cited above, (§3,) the text of Nárada, namely,—“The daughters (shall take) their mother’s (property;) in default of daughters, her (or their) offspring,”—the text of Kátyáyana, namely,—“But in default of the daughter, that property devolves on the son,”—the text of Yogísvara, namely,—“Daughters share the residue of their mother’s property after payment of her debts; in their default, the issue,”—and other texts of law, declaring the succession of daughters to woman’s property, refer to *yautaka* or nuptial presents only, in conformity with the text of Manu, namely—“The *yautaka* is the share of the unmarried daughters alone,”—and with the text of Vasishtha,—“Let the females divide the nuptial present of their mother”: otherwise there would be a conflict with the text of Manu cited before (§ 1.) The term *párinayya* (in Vasishtha’s text, rendered into ‘nuptial present’) has been explained by them to mean what is received at marriage (*parinaya*), that is to say, *yautaka*. But in the Kalpataru and the Vivádachintámaṇi, the reading is *párináyya* which is explained to mean the paraphernalia of a woman, such as the mirror, comb and the like.

### 5. But Vijnánesvara says :—

Every description of woman’s property goes first, even when there are the sons and the rest, to the daughters, the daughter’s daughters and the daughter’s sons; and in their default to the sons and the rest. The succession to the estate of a childless woman will be explained hereafter. In the text of Yogísvara, namely,—“Daughters share the residue of their mother’s property after payment of her debts; in their default the issue”—the term ‘their’ relates not to daughters alone, but also to daughter’s daughters and daughter’s sons, by reason of the text of Nárada, namely,—“The daughters (shall take) their mother’s (property); in default of the daughters, their (or her) offspring.” In this text (of Nárada) the term *tat* (their or her) in the compound *tadanvayas* (their or her offspring) refers to the contiguous term daughters (and not to the term ‘mother’s’ which is more remote). Accor-

dingly the daughters' offspring including the daughters' daughters and the daughters' sons (is meant by the term *tulauvayas*). Amongst them also first the daughter's daughter (succeeds;) in her default, the daughter's son. In the text of Yogisvara, which will be cited below, the term 'daughters' in the passage "but if she leave progeny, it will go to the (daughter's) daughters,"—means the daughter's daughters; for, otherwise, there would be tautology, as he himself has clearly declared the succession of daughters in the text,—“The daughters share the residue of their mother's property &c.” The succession of the daughter's son follows from the general expression “the daughters' offspring” (Naradá's text).

But the right of the sons follows from the uni-residual conjunctive compound *pitros* ('of the parents') in the text (of Yájnavalkya,)—“After the demise of the parents the sons shall equally divide the heritage and the debts”: and this has been already explained before. Also in the text,—“The daughters (shall take) the mother's (property); in their default, the issue,”—the son and the like are intended by the term 'issue,' since it is proper to construe it with the term 'mother's,' and since 'the daughters' are separately mentioned. But there can be no defect of tautology (attributable to this interpretation of the above two texts of Yajnavalkya) since this (latter) text is intended to establish the succession of the sons in default of the daughters, (while in the first text the mere right of the sons to inherit, is mentioned).

But the meaning of the text of Manu, namely,—“But when the mother is dead, &c.” (§1)—is this: ‘All the uterine brothers shall equally divide their maternal property,’ when their succession opens, ‘and the uterine sisters’ when their right takes effect. But the meaning is not that both (brothers and sisters) shall together divide; for, in the absence of the conjunctive compound or the uni-residual conjunctive compound, the mutual union (of brothers and sisters) does not appear; but the term 'and' (which it may be contended, bears the same meaning as a conjunctive compound) may reasonably be explained to express the union (of 'brothers and sisters') merely so far as regards their grammatical construction, both being

nominative to the verb ‘divide.’ As for example, if it is said, ‘Devadatta *and* Yajnadatta shall pursue agriculture,’ it does not (necessarily) appear that they must jointly do the same. Although, the right of both (sons and daughters) to succeed to their mother’s estate has been declared in other texts, still this text is intended to prohibit, by the employment of the term ‘equally,’ the mode of unequal distribution on account of specific deductions and the like.

The term ‘uterine’ is used (in the above text of Manu) for the purpose of excluding the brothers and sisters sprung from a different mother. Hence it is that Manu (in another text) declares that the property of a low caste woman is taken by the daughter of her co-wife of a superior class, though not begotten by herself, and in her default by her progeny ; thus,—“The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇi (step) daughter take ; or let it belong to her offspring.” Here by the term ‘woman’ is intended a woman of the Kshatriya or the like (inferior) class, having no issue ; and the term ‘Bráhmaṇi’ is illustrative, meaning, belonging to a superior class. This (text) forms an exception to the rule that ‘the property of a childless woman, appertains to the husband.’ Hence the daughter of a Kshatriya co-wife takes the property of her childless step-mother of the Vaisya class, and the daughter of a rival wife of the Vaisya class takes the property of her Súdra step-mother without issue ; and in her default her children ; and in their default, the text,—“The property of a childless woman appertains to the husband,”—is applicable to such property.

Hence the daughters and the rest are entitled to take the property of a woman leaving issue, in the first instance ; and after them the sons and the like.

6. On this Jímútaváhana says: Since, although a conjunctive compound (of the terms ‘brothers’ and ‘sisters’) is not employed in the texts of Manu, Vrihaspati, Sankha and Likhita, yet the same meaning (that is expressed by a conjunctive compound) is conveyed by the term ‘*and*’ which signifies conjunction ; since in the text

of Devala the conjunctive compound itself of ‘sons and daughters,’ *viz.*, *puttra-kanyānām* is used; and since, for the sake of consistency (of this text of Devala with the texts of Manu and the rest), it is proper that the term ‘and’ in those texts (of Manu and the rest) also, should denote the mutual union (of brothers and sisters connected by it), therefore it is reasonable to say that brothers and sisters shall together take the property, dividing the same. Besides if the daughters alone were entitled to take the entire property of their mother, then the special text with respect to the *yautaka* or nuptial presents would be meaningless. And it is not reasonable to say that this text (regarding *yautaka*) is intended to exclude the married daughters, as in it the term “unmarried daughters” is employed; because their exclusion, as regards all kinds of *stridhanam*, is declared in the texts of Gautama and the rest, and because it cannot but be admitted that on failure of the unmarried daughters, the married ones are entitled to take even the *yautaka*. Hence the distinction is, that joint succession alone of sons and daughters, is intended by Manu and the rest, to be relative to the presents before the fire, and other kinds of woman’s property; but the succession of the daughters alone, to be relative to *yautaka* or nuptial presents. But the terms ‘gift subsequent’ and ‘affectionate gift of the husband’ used by Manu in another text are intended to include other descriptions of woman’s property such as ‘presents before the nuptial fire,’ &c.; for, otherwise, the separate text regarding the *yautaka* would be useless.

This is the opinion also of the author of the *Dāyatattva* and of others.

7. As regards this (contention) it appears that, as there is no authority to support the view that the terms ‘gift subsequent,’ &c., mentioned (in the text of Manu) are intended to be illustrative, therefore to all kinds of the mother’s estate excepting these two (*viz.*, the gift subsequent and the affectionate gift of the husband), the succession of the daughters takes place in the first instance; and on failure of them, the succession of the sons. The special provision, however, concerning the *yautaka* is

intended to indicate the exclusion of the married daughters and the like. If it be said that their exclusion is common to other kinds of woman's property (and not peculiar to the *yautuka*, consequently the special provision is useless). The answer is, true; but (the distinction is that) the exclusion is not unconditional (as regards other kinds of woman's property), whereas in the case of *yautuka* it is unconditional. Accordingly it is held by the author of the Smritichandriká, and others that on failure of the maiden daughter the *yautuka* appertains to the husband or the like, alone, according to the form of marriage, and not to the married daughters and the like.

But what is intended by Professor Vijnánesvara is this: The text (of Yájnavalkya) which generally lays down that woman's property is to be inherited by the daughters, can only be restricted in its application, if there be another text which admits of no other interpretation excepting the one that restricts the first text. But it cannot be contended that the texts of Mānu and others, establish the joint succession of sons and daughters, and admit of no other explanation. For these texts may be explained to establish the son's right of inheritance. Nor can it be contended that the joint succession of the sons and daughters is indicated by the term 'and' (in some texts) and by the conjunctive compound (in the text of Devala, §1). Because these may as well be explained to express the construction (of both the brother and sister or the son and daughter) as the persons who are to effect the division. Otherwise, when the uni-residual conjunctive compound is used in the text,—“The wife and the daughters also, the parents (*pitarau*), &c.,”—and the conjunctive compound is used in the text,—“it appertains to the mother and the father (*mātā-pitros*),”—the succession of the mother and the father, one after the other, which is maintained in all the commentaries (on law), would be unreasonable. In that instance it is said that, consistently with the text of Vishnu and the like, the compounds may be explained to express no more than the association (of the component words) as regards grammatical construction, but that the order of succession, one after the other, of the persons expressed by the words,

though at variance (with the grammatical construction) is not incompatible (with it). Similarly, in this instance also, the order of succession, one after the other, (of the sons and the daughters,) is expressed by the text of Yogisvara, namely,—“On failure of them, the issue,” —and by the text of Kátyáyana, namely,—“ But in default of the daughters, the inheritance devolves on the sons;” and in conformity with these texts, it is proper to explain the conjunctive compound and the term ‘and’ (used in other texts) to mean no more than the association (of the terms sons and daughters) for grammatical construction : but it is not proper to say that agreeably to the conjunctive compound and the term ‘and’ (occurring in other texts) these texts are to be interpreted to bear a different meaning (from what appears on the face of them). Besides, there would be the fallacy of mutual dependence : since, if the joint succession (of sons and daughters) be established, then the texts (declaring the succession of daughters alone) are to be restricted in their application ; but if these texts be restricted in their application, then it can be ascertained that the texts (in which the conjunctive compound or the term ‘and’ is used) intend joint succession (of sons and daughters).

It cannot be argued that (agreeably to the above view) the special text (of Manu §1) regarding the gift subsequent and the like would be meaningless. Since this text may have a meaning, if it be interpreted in the same way in which the text regarding the *yautaka* has been explained in the Smritichandriká. Or all the texts may have a meaning if interpreted in this way : the mere right of inheritance of the children being established by the text (of Manu regarding the gift subsequent and the like) in which the term ‘gift subsequent’ is intended to be illustrative, the equality (of sharos) and the like are laid down by the texts like—“ But when the mother is dead, &c.” (§ 1). Thus there is no difficulty.

The venerable Vidyáranya, however, has given both (the above interpretations, the first of which is) according to the Smritichandriká and (the second according to) the Mitákshará, but he has not passed any opinion.

8. But the succession, before the sons and the like, of the daughter's daughter, and after her, of the daughter's son is unanimously admitted by the authors of the Mitákshará, the (Smriti) Chandriká and the Madanaratna as well as by the venerable Vidyáraṇya.

But Jímútaváhana and the author of the Dáyatattva say :—In default of the daughters, the succession of sons alone takes place, but not the succession of the daughter's daughter and the like, and afterwards that of the sons. Since, in the text of Nárada, namely,—“The mother's (property), the daughters (shall take); in default of daughters, her (or their) issue”—the term ‘issue’ which signifies, the issue in the shape of the son and the like, cannot properly be construed with ‘daughters.’ For the term daughter which signifies a particular sort of progeny cannot possibly be construed with another (word ‘issue’ signifying) progeny, as there is no mutual requirement (of the words) both being alike. Nor is the want of mutual requirement affected by the construction (of the term ‘issue’) with the pronoun *tat* (her or their), for this pronoun (relating as it does agreeably to the opposite view, to the term daughters) must present the idea of daughters as such. Besides, as in the text of Yájnavalkya (§ 4), the term ‘daughters’ has the termination of the first or nominative case, and the pronoun ‘of them’ (*tābhyaḥ*), has that of the fifth or ablative case, they cannot be construed with the term ‘issue’ which requires a word in the genitive case to be construed therewith; hence it is to be construed with the term ‘mother's’ though it is separated by the intervention of other terms. Therefore consistently with the text of Yájnavalkya the meaning of the term in the text of Nárada also, is, mother's issue such as sons and the like, but not the daughters' issue. Moreover, conformably with the text of Baudháyana, namely—“Male issue of the body (*angaja*) being left, the property must go to them,”—the succession of the son alone as an immediate issue of the body is proper by reason of propinquity, but not of the daughter's son and the like who are mediate descendants not born of her person.

This is erroneous. For if a word signifying progeny could not be construed with another word denoting progeny,

then there could be no such construction in the case of the son and the like also. If this argument be met by saying that there can be no objection to the construction of two words signifying progeny when one is expressed to be the progeny of the other, then the same may be said in this instance too. (And it must be so said,) for otherwise there could be no construction even in such a case, as 'the daughter's son.' Therefore this (objection of Jímútaváhana) proceeds only from ignorance of grammatical construction. In the text of Yájnavalkya, however, although the son and the like alone are expressed by 'the mother's issue,' still this text merely recites the right of the sons which has already been laid down in the text,— "On the demise, of the parents, the sons shall equally divide the heritage and the debts,"—for the purpose of showing that the liquidation of the debts and the default of the daughters are the conditions of their right: and there can be no inconsistency if their right takes effect even after the daughter's sons. But the text of Bauḍhayana, namely—"male issue of the body being left &c."—which may be taken to establish by its generality the son's right of succession to the estate of the mother, or to establish generally the right of sons and daughters as the term *angaja* (rendered into male issue) signifies any child,—ought to be interpreted with reference to a propinquity which is not inconsistent with any other text. So this (*i. e.* the argument drawn from this text) is nothing.

9. (The heir to woman's property) on failure of issue is declared by Yogisvara,—"If she be gone (to rest) without issue, her kinsmen shall take it."—'If she be gone,' *i. e.*, if she die 'without issue,' *i. e.*, without leaving descendants from the daughter to the great-grandson, 'her kinsmen,' *i. e.*, such as are mentioned in the following couplet, 'shall take it,' *i. e.* the woman's property.

The same sage declares the succession of the kinsmen in different ways according to the different forms of marriage, thus,—"The property of a childless woman, (married,) also in the four forms of marriage, of which (series of four) the Bráhma stands in the beginning, goes to her husband; but if she is a mother, it belongs to her (daugh-

tor's) daughters; and in other forms of marriage, it goes to the father,"—'The four forms of marriage are, the Bráhma, the Daiva, the A'rsa and the Prájápatya: the Gándharva also is included, by force of the term 'also.' Or 'the four forms' may be taken to be exclusive of the Bráhma, and to include the Daiva, the A'rsa, the Prájápatya and the Gándharva; for the compound *bráhmádishi* (rendered into, 'of which the Bráhma stands in the beginning,')—being a *bahuvrīhi* or a descriptive adjective, the attribute expressed by it may be taken to have no reference to the predication. By this (interpretation) is removed the disagreement (of this text of Yájnavalkya) with the following text of Manu, namely,—"It is ordained that the property (of a woman married) in (the forms of marriage called) the Bráhma, Daiva, A'rsa, Gándharva or Prájápatya, shall belong to the husband alone, if she die without issue."

The property of a childless woman married in the Bráhma or the like form of marriage belongs to her husband, and on failure of him to the husband's nearest relations. For the nearness to the owner being debarred by the husband, preference ought to be given to the nearness to the husband.

But if a woman be married 'in other forms of marriage,' i. e., in the A'sura or the like, 'it goes to her father,' i. e., to the mother and the father, since the term 'father' (*pitrī*) is the result of the uni-residual conjunctive compound (of mother and father). Amongst them also, it goes to the mother in the first instance, and after her to the father, according to the principle set forth while explaining the term 'parents', (*pitarau* in the text,—"The wife and the daughter also, the parents &c.") there being no other text against the application of that principle to the present case. Accordingly, in the text,—"But the property given to a woman (married) in the A'sura or the like forms of marriage, is ordained for the mother and the father, if she die without leaving issue,"—Manu shows the priority of the mother, by placing first the term mother in the conjunctive compound *máta-pitros*.

Besides, as it is expressly declared that the father inherits the property of a maiden on failure of the mother, so the same order is proper in this case also. Thus Bau-

dháyana declares,—“The wealth of a deceased maiden, let the uterine brothers themselves take; on failure of them, it shall belong to the mother; in her default, to the father.” On failure of the mother and the father, it goes to their nearest relations.

In all the above-mentioned forms of marriage without distinction, if the woman be ‘a mother,’ i. e., have issue, her property belongs to her ‘daughters.’ It has already been mentioned that by the term ‘daughters’ in this text (para. 2) the daughter’s daughters are intended. The daughter’s daughters also, inherit in the order of the unmarried ones, &c., by reason of the text of Gautama and others. And it has previously been stated that when the daughters take the property, something should through affection be given to the daughter’s daughters. When the daughter’s daughters have their mothers different, and those sprung from one mother are unequal in number to those sprung from another, they shall divide their grandmother’s property according to their mothers, just as grandsons do according to their fathers; for Gautama declares,—“Or let the share of each class be according to the mother.”

10. But Jímútaváhana says:—This text lays down a rule regarding only that wealth which is received at the time of the celebration of marriage in the Bráhma or the like forms, but not regarding the entire property of a woman married in any of those forms. Because the connection (of the words) being, “the property, in (the forms of marriage called) the Bráhma, &c.,”—if the time of the celebration of marriage be indicated, the term (‘in the Bráhma &c.’,) has a metaphorical meaning, in relation to time present; but, if a woman married in those forms be intended, it has a metaphorical meaning in relation to the past ceremony of marriage: hence the latter meaning is less approved than the former.

The same is the opinion of his follower, the author of the Dáyatattva.

This is not right. For it being generally laid down in the preceding text that the kinsmen shall take the property of a childless woman, the question arises, what sort of kinsmen shall take the property of what description of

a childless woman? Therefore it is proper to say that the terms Bráhma, &c., are intended to qualify her, (*i. e.*, the childless woman). As for the argument founded upon a consideration of the relation to the present and past time; —that is worthless. Because in both (the meanings) the quality of being past is the same when the partition is made, (gift and marriage being then both past); and because the quality of being present at the time of marriage is of no importance; also because the connubial relation (of the woman) effected by the marriage, is of greater importance.

11. But whatever may be the form of marriage, the property received by a woman from her parents subsequent to the marriage, belongs to her brothers alone. This is declared by Kátyáyana,—“But whatever immoveable property has been given by the parents to their daughter, goes always to her brothers, if she die without issue.”

But Visvarúpa and Jimútaváhana says:—What had been given to her by the parents before her marriage, goes to the brothers; because what is received after marriage becomes ‘gift subsequent,’ and what is received at the time of marriage goes, according to the form of marriage, either to the husband or to the parents.

This is not tenable. For there is no conflict (of this text with any other text,) as this text is relative to immoveable property. Nor can it be argued that when the brother succeeds to immoveable property, his succession to moveable property follows from the rule of ‘the staff and the cake’ (*a fortiori*). For that rule is not applicable to what forms an exception.

12. But the fee or *sulka* belongs to uterine brothers alone, by reason of the text of Gautama, namely,—“The sister’s fee or *sulka* belongs to the uterine brother.” On failure of the uterine brother, it goes to the mother; for the same sage says,—“After them, it belongs to the mother: but some say, (the mother inherits) before them.”—The latter is the opinion of others.

13. What was given to a woman by her *bandhus* (or consanguine relations) belongs, if she die without issue, to her

*bandhus*, in the first instance, failing them, to her husband, by reason of the text of Kátyáyana, namely,—“ What was given by the *bandhus* appertains to the *bandhus*; on failure of them, it goes to the husband.”

14. But when there is a failure of the above-mentioned heirs to a childless woman’s property, Vrihaspati ordains,—“ The mother’s sister, the maternal uncle’s wife, the paternal uncle’s wife, the father’s sister, the mother-in-law and the wife of an elder brother are pronounced similar to mothers: if they leave no issue of the body, nor son (of a rival wife,) nor daughter’s son, nor their son, the sister’s son and the rest shall take their property.”—Here by the term *aurasa* or ‘issue of the body,’ both sons and daughters are included; for they debar all (other heirs,) and the order in which they debar others has previously been mentioned. And by the term ‘son,’ is intended the son of a co-wife; for Manu declares,—“ If among all the wives of the same person, one be a mother of a son, then all of them become by that son mothers of male issue: this is ordained by Manu.” But the term ‘son’ is not intended to be in apposition with the term *aurasa* or issue of the body; because in that case it would be useless, and because the sister’s son and the rest would be heirs although the son of a co-wife be living; and that would be contrary to immemorial custom. The pronoun ‘their’ or *tat* in the phrase ‘their son’ relates to the terms ‘issue of the body’ and ‘son of a co-wife,’ though they are separated (by other words,) and not to the term ‘daughter’s son’ though it immediately precedes; because the son of a daughter’s son is not competent to offer oblations. Hence on failure of heirs down to the daughter’s son, first the *aurasa* inherits, after him his sons and grandsons. For it is proper that the succession should devolve on them; inasmuch as they are competent to present the *pinda* and are liable to discharge the debts, by reason of the text,—“ Debts are to be liquidated by sons and son’s sons.” In their default, the son of a rival wife, his son and grandson (become heirs in their order); by reason of their being, under the circumstances, the giver of the *pinda*, and the liquidator of debts, and by reason of the text of Manu, cited above.

Hence on failure of these, the sister's son and the rest alone, in spite of the *sapindas* such as the father-in-law, are, by virtue of this text (of Vrihaspati) which is not reconcileable in any other way, entitled to succeed, according to their comparative propinquity, to the property of their mother's sister and the rest.

15. But the daughter-in-law and others (of the same sex) are entitled to food and raiment only; for the nearness as a *sapinda* is of no force when it is opposed by express texts: since a text of the Sruti declares,—“Therefore women are devoid of the senses and incompetent to inherit,”—and a text of Manu, founded upon it, says,—“Indeed the rule is that, devoid of the senses, and incompetent to inherit, women are useless.” The conclusion arrived at by the author of the Smritichandriká, Haradatta and other southern commentators as well as by all the oriental commentators such as Jimútaváhana, is, that those women only are entitled to inherit, whose right of succession has been expressly mentioned in texts such as,—“The wife and the daughters also &c.,”—but that others are certainly prohibited from taking heritage by the texts of the Sruti and of Manu.

Thus ends the partition of a woman's property.



## CHAPTER VI.

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### PARTITION OF CONCEALED PROPERTY.

§ 1.—Partition of concealed property. 2.—Concealment of joint property is theft. 3.—Restoration to be caused by gentle means.

1. Now is explained the mode of distribution of that which was at the time of partition, concealed by any one (of the co-heirs), but is subsequently discovered. On that (subject) Manu says,—“ When all the debts and wealth have been justly distributed according to law, if anything be afterwards discovered ; the whole of it shall be equally distributed.” Yogivara declares,—“ Effects which have been stolen by any one of the co-heirs, and which are discovered after the separation, let them again divide in equal shares : this is a settled rule.”—Here, from the use of the term ‘equal’ it appears that the (mode of unequal) distribution with specific deductions is prohibited : by the term ‘divide’ it is indicated that the property shall not be taken by him alone who discovers it, and that a smaller share shall not be allotted to him who concealed it.

2. Some (commentators) assert that, when the (above) texts may have a meaning (if interpreted) in this way, the concealment (by a co-heir) of joint property does not constitute the offence of theft, inasmuch as it was taken under the belief of its being (his) own. This is foolish. For in joint property there being also the right of other (co-heirs), it cannot be denied that there is ‘the wrongful taking of another’s property,’—which is the meaning of the term theft. If it be said that there is no theft as it was not taken with the belief of its being another’s. (The answer is :) it is not so, since concealment necessarily involves the belief of its being another’s; accordingly

the term 'stolen' is employed (in the above text of Yájnavalkya). (If it be asked) has not Manu in the text—“The eldest (brother) who out of covetousness defrauds his younger ones, shall forfeit the right of the eldest and his share, and shall be punished by the king”—condemned the eldest alone and not the younger ones in case of misappropriation of common property? (The answer is) true: but when an act which may be committed, is affirmed to be an offence if committed even by the eldest (brother) who holds the position of a father (to his younger brothers), then it becomes necessarily affirmed by reason of the rule of ‘the staff and the cake,’ that the same is an offence if committed by those (younger brothers) that are dependent on him and hold the position of a son (to him). Hence those who maintain that the texts declaring equal distribution in a case of concealment of joint property, intend that there is no offence of theft,—are silenced by this text of Manu, as well as by the following text of Sruti which declares it to be an offence without any distinction, namely,—“If any one dispossesses a sharer of his share, he may molest him; or if he does not molest him, he may molest his son or son’s son.”—The meaning of this text of Sruti is: ‘If any one dispossesses,’ i. e., deprives ‘a sharer,’ i. e., one entitled to a share, ‘of his share,’ that is, anyhow by force or fraud does not give him a share; ‘he,’ i. e., who is dispossessed of his share ‘may molest,’ i. e., injure ‘him,’ i. e., the dispossessor by reason of his offence; if he does not injure him, he may injure his son or grandson. Those, however, who are ignorant of the Sruti may indeed talk irrationally. But we have already said that even in the case of joint property, there being another’s right, the definition of theft is not inapplicable.

Just as (in an instance discussed in the Mímánsá) the adverse argument is set forth thus,—If, when the sacrificial food consisting of green kidney-beans is not procurable, black kidney-beans be used as a substitute by reason of the similarity (of these two kinds of beans in many respects), then the prohibition laid down in the passage, “Black kidney-beans are not fit for sacrifices,” does not apply; because they are used under the impression that

they contain the constituent elements of the green kidney-beans : but the conclusion arrived at is, that they cannot be used even as a substitute, upon the ground that all that is necessary for the validity of a prohibition, being, that what is prohibited might take place (but for the prohibition), the prohibition (of the use of black kidney-beans for sacrificial purposes), is not unreasonable, since (some of) the constituent elements of black kidney-beans also are unavoidably used, even when green kidney-beans are used, (because the two sorts of beans must have some of their constituent elements common, which make them appear similar), and hence those elements would have been fit for sacrifices.

3. No complaint, however, should be made by the co-sharers before the king, and even if it be made the king shall cause the restoration by gentle means : this, of which the only visible object is the maintenance of good feelings (of the co-heirs towards each other), is declared by Kátyáyana, thus,—“Property misappropriated by a *bandhu* or kinsman shall not be caused to be restored by force.” Nor should it be complained that the consumption by a co-heir during coparcenary was over and above his due proportion ; and even when there was such consumption, it is not to be taken into account by the king. To this effect the same sage declares,—“The (unequal) consumption of unseparated *bandhus* or kinsmen shall not be removed” (by an adjustment of accounts). The purport is that unequal consumption cannot be prevented, as it is unavoidable.

It is to be observed that while these texts (of Kátyáyana) may in this way be reasonably explained to mean no more than what they plainly signify ; it cannot be held that these texts also intend that there is no offence of theft, for then they would have a meaning not expressed : hence in the above cases also, the penance for theft, and legal punishment must take place.



## CHAPTER VII.

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### OF IMPARTIBLE THINGS.

§ 1.—Self-acquired property. 2.—Of other things not liable to partition.

1. Now, what is not liable to partition, is explained. On this Yogisvara declares,—“Whatever else is, without detriment to the paternal property, acquired by a man himself, or received from a friend or obtained at nuptials, does not belong to his co-heirs (*dhyādas*) ; nor shall he, who recovers hereditary property which had been taken away, give it up to his co-heirs ; nor what has been gained by learning.”

The term ‘without detriment to the paternal property’ is to be construed with all (the items of property described); for, were it isolated in construction, then the items such as what is received from a friend, although they involve the expense of the paternal property, would not be liable to partition; but this would be opposed to the practice of persons following the precepts of the Vedas, and, with respect to what is gained by learning, to the text of Nárada, namely,—“He who maintains the family of a brother engaged in the pursuit of knowledge, shall take, though he may be ignorant, a share of the wealth gained by that knowledge.”

Kátyáyana also confirms this view by the definition he gives of the gains of learning that are imparable, thus,—“Wealth gained through learning acquired from a stranger while receiving a foreign maintenance is termed gains of learning.”

Manu also clearly says,—“Whatever a man has acquired through his own exertion without relying on the paternal property, he shall not give it up to his coparceners (*dhyādas*) ; nor what has been acquired through learning.”—‘Exertion’ signifies service and the like.

A special rule has been laid down by Sankha, with regard to hereditary immoveable property, though recovered without detriment to the paternal estate, as in the text,—“When one parcener alone has by his own exertion recovered land which had been lost before; the others shall get in proportion to their shares, but after setting apart a quarter share for him.”—The meaning is : after having allotted to the recoverer a fourth-part (of the land) as a price of the recovery, all the co-sharers (including the recoverer) shall equally divide the remaining three parts.

Although this sort of imparibility follows from the very (plain) principle that ‘what is acquired by a man belongs to him,’ (and so no authority of the Sastras is necessary for establishing it); still there is no defect, inasmuch as generally the Institutes on Positive law do, as we have already stated in the introductory chapter, lay down rules which are as well deducible from reason.

2. Other kinds of property not liable to partition are mentioned by Manu, thus,—“Clothes, vehicles, ornaments, prepared food, water, women, religious fund and charitable work (*yoga-kshemam*), as well as a passage are declared to be not liable to partition.”

*Patram* ('vehicle') means, conveyance.

‘Clothes and the like’ (i. e. ornaments) belong to him alone by whom they have been worn : but those that are not worn but are intended for sale, are certainly liable to distribution.

‘Prepared food,’ i. e., cooked food, shall be partaken by all as much as they can, but shall not be weighed and divided.

‘Water,’ i. e., a reservoir of water, such as a well, shall be used by all accordingly as they require.

‘Women,’ i. e., female slaves being unequal (in number to the shares) shall not be divided, but shall be employed in work by turns. But women kept in concubinage by the father shall not be divided, though equal in number, by reason of the text of Gautama, namely,—“No partition is allowed in the case of concubines.”

The term ‘religious fund’ (*yoga*) means a fund for the performance of religious ceremonies ; and ‘charitable

work' (*kshemam*) signifies a reservoir of water, or the like, constructed for public benefit. The impartibility of these two, though raised or made at the charge of the paternal property, are set forth as examples : since, directly or indirectly, a partition of these is not possible, far less when these are hereditary. Accordingly Laugákshi declares,—“The sages declare that charitable work is a reservoir of water or the like constructed for public good, and that religious fund is property set apart for the performance of religious rites : these two are pronounced impartible : so are the bed and the seat.” Some hold, that the term *yoga-kshema* intend those who perform sacrifices and charitable works, as the king’s minister (of charitable works,) the (family) priest, and the like. Others say that it signifies weapons, cow-tails, shoes and similar things.

A passage’ is a way for ingress and egress to and from a house, garden or the like ; this also is impartible.

3. Clothes and the like worn by the father shall be given to the person who partakes of food at his obsequies : as directed by Vrihaspati,—“The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, shall be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast.”

4. Also ornaments that are worn by the females are not partible : thus it is declared,—“The *dáyádas* or co-heirs shall not divide such ornaments as are worn by the females during the life of their husband : they, who do so, become degraded.”—From the term ‘worn’ it appears that those that are not worn are liable to partition. By the phrase ‘during the life of their husband,’ it is indicated that whatever is worn in any part of the body as a badge of the husband’s life, is not liable to partition.

5. Also what has been received from the father as a token of affection, cannot be divided : thus it is declared,—“By favor of the father, clothes and ornaments are used.”—By the term ‘are used,’ their impartibility is indicated.

Likewise, what has been given by the parents (is not divisible) by reason of the text of law,—“Whatever has been given by the parents to any one, becomes exclusively his property.”

But it is to be observed that gifts by the parents out of favor or affection should be guided by propriety but not by caprice ; for that would be contrary to the practice of the learned.

6. The details of what has been acquired by the use of paternal property are found in many texts of law concerning what is gained by heroism, and the like ; but these are not written here for fear of increasing the bulk of the book.

## CHAPTER VIII.

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### EXCLUSION FROM INHERITANCE.

§ 1.—Those incompetent to inherit. 2—Maintenance. 3.—Penance.  
4.—Right cannot be divested by subsequent disqualification; right revives on subsequent cure. 5.—Females disqualified. 6.—Their sons entitled. 7.—Outcast and his son, not to be maintained. 8.—Son by a woman of superior class. 9.—Impotent &c. can marry. 10.—The daughters and wives. 11.—The vicious are excluded.

1. Now those that are not entitled to shares on partition (or succession) are described.

On this subject Yogisvara,—“ An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, as well as others (similarly disqualified) shall not, get shares, but shall be maintained.”

“ His issue” means, the issue of an outcast.

It is to be observed that “ an impotent person” and “ a blind man,” if so from their birth, are certainly not entitled to shares on partition, but if they become so in the interim, are certainly entitled to shares on a partition agreeably to the mode laid down in the text,—“ Or his allotment must be made out of the visible estate corrected for income and expenditure,” (p. 94,)—provided their cure be effected by medication or the like.

By the term “ others” are included those that have adopted an order other than that of the householder, that are inimical to their father, that are addicted to vice (*upapātaka*), that are deaf or dumb, and that are destitute of an organ of sense (or action). Thus Vasishtha declares,—“ But those who have adopted an order other than that of the householder are not entitled to shares.” So also Nārada says,—“ An enemy to his father, an outcast, an impotent person, and one who is addicted to vice take no share (of the inheritance), though they be *aurasa* or real sons, much less if they be sons of the wife.” Also Manu

says,—“ An impotent person and an outcast are excluded from a share of the heritage ; and so are persons deaf and blind from birth as well as madmen, idiots, the dumb and whoever are destitute of an organ (of sense or action) :” *nirindriya* or “ destitute of an organ ” is one who has lost an organ of sense by disease ; hence an impotent person does not come under it. But some say that “ destitute of an organ ” means those that are devoid of hands, feet or the like (organ of action).

2. The impotent and the others do not obtain any share but “ shall be maintained ” (§ 1 Yogisvara’s text) *i. e.* supported by giving food, raiment or by the like. But if they be not maintained, a grave offence is committed ; so Manu declares,—“ To all of them food and raiment ought to be given by a wise man ; he who does not give, becomes deeply degraded.”—“ Deeply ” means for life.

3. Amongst them, however, an outcast (*poluta*) and one addicted to vice (*upa-pátki*) are excluded from inheritance, if they do not perform the penance. But of one who does not, out of perverseness, perform the penance, the exclusion is certain.

4. The exclusion, again, of these, takes place, if their disqualification occur previously to partition (or succession;) but not also if subsequently to partition (or succession;) for there is no authority for the resumption of allotted shares.

Professor Vijnánésvara says that if subsequently (to partition or succession) their defects are cured by medication or the like, they become entitled to obtain their shares. And this is reasonable ; because it is by reason of the defects that they were disqualified to share ; and because the same principle is applicable (to such a case) as is laid down in the text,—“ One who is begotten by one of equal class, after the co-parceners have been separated, is taker of the share.” (p. 92.)

5. The (masculine) gender in the words ‘ an outcast,’ &c., is not intended to be expressive (of restriction,) for it

cannot reasonably be accepted (in that sense); in the same way as in the text,—“A Bráhmaṇa (in the masculine gender) shall not drink spirituous liquors.” Hence, so far as is applicable, this (law of exclusion based upon defects) excludes the wife, the daughters or the like (female heirs) as well.

6. Though the impotent and the rest are excluded from inheritance, still their sons are entitled to the shares (which would have been allotted to them). This is declared by Yogisvara,—“But of these, the *aurasa* or true son and the *kshetraja* or son of the wife, if free from defect, take the shares.”—“Free from defect” means, having no defect such as is mentioned above which causes the exclusion from inheritance. Among those (that are excluded from inheritance,) an impotent person may have a *kshetraja* or son of the wife; the rest, an *aurasa* or a real son as well. The mention of these two kinds of sons is intended to exclude the other descriptions of sons.

7. An outcast and his son are not entitled to maintenance. Accordingly Devala says,—“When the father is dead, an impotent person, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a person wearing the token (of religious mendicancy) do not obtain a share of the heritage. Food and raiment should be given to them excepting the outcast: but the sons of such persons being free from similar defects, shall obtain their father’s share of the inheritance.”—‘A person wearing the token’ means one who has become a religious wanderer or the like. Here (*i. e.*, in the second verse) the term ‘outcast’ includes also the son of an outcast, for being begotten by an outcast he too becomes an outcast; by reason of the text of law, namely,—“The issue of an outcast becomes certainly outcast excepting a female, for she goes to another (family).” The term ‘dead’ indicates (only) the time for partition, because they are not entitled even if partition be made during the lifetime of the father.

8. Also Kátyáyana says,—“The son of a woman married in an irregular order, and he who is begotten by

a kinsman of the same family are unworthy of inheritance ; and so is an apostate from a religious order." If a woman of a superior tribe be espoused after marrying one of an inferior tribe, then both of them are married in irregular order. A *kshetraja* or son of the wife, procreated by a kinsman of the same family without being authorized to raise up issue, is unworthy of inheritance.

" But the son of a woman married in irregular order, may be heir, provided he belong to the same class with his father ; and so may the son of a man belonging to a different (but superior) tribe, but begotten by a woman espoused in the regular order. The son of a woman married by a man of inferior tribe does not take the (*riktha* or unobstructed) heritage. But bare food and raiment only should be given by his *bandhus*. But in default of the *bandhus* he may take his paternal property. The *bāndhus* (being step-brothers ?) shall not be compelled to give up (to him a share of) that property received by them, and) belonging to (their or his ?) own father." (Vide *Dayabhāga*, ch. V. para. 16 and notes.)

9. It is declared by Manu that an impotent person and the rest may espouse wives and have sons, thus,— "If an impotent person and the rest should at any time desire to marry, the offspring of such as have issue shall be capable of inheriting." *Tanu* (rendered into issue) means offspring.

It cannot be argued, how can an impotent person and the rest contract marriages, since they are degraded for want of investiture with the sacred thread ? Because, for want of investiture owing to unfitness for investiture, a person is not degraded, any more than a Sūdra.

10. Their daughters must be maintained till their marriage, and must be married. Their wives, however, that are childless and chaste must be maintained, provided they are not perverse ; if otherwise, shall be expelled. This is declared by Yogisvara,— " Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported : but such as are unchaste should be expelled ; and so indeed should those that are perverse."

11. A'pastam̄ba ordains,—“ Of an excommunicated person, the inheritance, oblations of food and libations of water cease.”—‘ An excommunicated person’ is one in whose company water is not drunk (by his caste men). Likewise Vrihaspati says,—“ Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth : it is declared to belong to such kinsmen offering funeral oblations to him as are versed in the Vedas. A son redeems his father from debt to superior and inferior beings : hence there is no use for one who acts otherwise. What can be done with a cow which neither gives milk nor bears calves ? For what purpose was that son born who is neither learned nor virtuous ? A son who is ignorant of the Sástras and devoid of courage and good purposes, who is destitute of the practice of devotion, and who is wanting in good conduct, is similar to urino and excrement.”

The meaning is this : A son who performs the obsequies of his father and other ancestors, is of approved excellence, though he be uninitiated ; nota son who acts otherwise, be he the eldest and conversant with the whole Veda.

The purport is, that the very ownership of the paternal property forms the remuneration of one who performs the duties of a son : wherefore should one that neglects them have a right to that remuneration ? To this effect is the text of law, namely,—“ Since a son delivers his father from the hell called *put*, therefore he is named *put-tra* by the self-existent himself.”

Also Manu says,—“ All the brothers who are addicted to vice lose their title to inheritance.”—The purport is, that those who are incapable of performing the rites enjoined by the Sruti and the Smriti, as well as those that are addicted to vice, are not entitled to get shares.

Thus (are described) those that are not entitled to shares on partition (or succession).

## CHAPTER IX.

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### RIGHTS OF SEPARATED CO-SHARERS.

§ 1.—Power of a separated co-sharer to dispose of his share. 2.—Inmoveables. 3.—Partition cannot be re-opened.

1. Now the rights of separated kinsmen (are considered). On that subject Nárađa says,—“ When there are many sprung from one man, whose duties are separate, whose transactions are separate, and whose instruments of (household) work are separate ; if they be not accordant in affairs, should they give or sell their own shares, they may do all that as they please ; for they are masters of their own wealth.”

The meaning of this is : “ Many sprung from one man,” *i. e.*, many brothers,—some say that the term “ being separated” is understood, but in our opinion, the terms “ whose duties are separate,” &c., signify that they are separated, for it does not appear that these terms form the predicate, (and the construction of the text is not that “ many sprung from one man, shall have separate duties &c.,”) since such an injunction would be useless ;—“ whose duties” such as the worship of gods, ancestors and the twice-born, “ are separate,” *i. e.*, apart from those of the other co-sharers ;—it does not mean that duties consisting in the preservation of the sacred fire, &c., are separate, for although the performance of these duties depend upon wealth, still they are separate even in a joint family ; accordingly, Vrihaspati says, “ The worship of gods, ancestors, and the twice-born is joint among those who live in commensality : but the same takes place in every house of the separated kinsmen ;” and this (text) has been already considered (by us);—“ whose transactions,” *i. e.*, agriculture and similar temporal business, “ are separate ; if they be not accordant in affairs,” *i. e.*, if they do not give permission to each other, still “ should they give or sell their own shares, they may do, as they please, all

that" also any other transaction such as mortgaging, borrowing or lending.

If the separated co-sharers accord their assent then only the determination of any dispute becomes facilitated ; but if they do not, then gift &c., do not become invalid. The reason for this is, "for they are masters of their own wealth," *i. e.*, of the property which has become the subject of their exclusive right. The purport being, that mutual assent is requisite when the property is common, but not also when it is separate.

2. As for what has been ordained by Vrihaspati, namely,—“ Separated kinsmen, as those that are unseparated, are equal in respect of immoveable property ; for one has not power over the whole to give, mortgage or sell it :”—that also is to be taken to lay down that the permission of the separated kinsmen is desirable simply for the purpose of the facility of determining any dispute, in the same way as the permission of the headman of the village. For in the case of immoveable property the determination in a different time, of the question whether the family was separated or joint, may become difficult if in the long interval the attesting witnesses and the like cease to exist. But should the permission be granted, then any dispute (regarding the disposition of property) may be decided, without determining the question as to partition. This is the opinion of Vijnānesvara and many others. But the author of the Smritichandrikā says :—If the co-sharers though separated consider the partition of immoveable property to be inconvenient, and so divide the other kinds of property and take their shares separately, but keep the immoveable property joint, with the stipulation that ‘ we shall enjoy its profits by dividing the same at the time of realization :’ this text (of Vrihaspati) refers to such immoveable property.

This (assertion of the author of the Smritichandrikā) is merely an assumption ; for in that case permission is necessary by reason of the very fact of the property being joint.

3. The same sage declares,—“ Whatever share has

been allotted to any one, he shall not complain after receiving the same."—"Receiving' means, accepting. Any one who gives his assent at the time of partition and afterwards disputes, shall be restrained by the king, and punished should he persist. This is declared by the same sage, thus,—“If any one who has received an allotment by his own choice, disputes again; he shall be confined to his own share, by the king, and shall be punished if he perseveres.”—"Perseveres' means persists.

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## CHAPTER X.

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### ASCERTAINMENT OF A CONTESTED PARTITION.

§ 1.—Evidence of partition. 2.—Circumstantial evidence. 3.—Ordeals and oaths. 4.—Partition over again.

1. The mode of partition having been described, now is stated the modo of determining a doubt regarding the fact of a partition having been made.

On that subject Yajnavalkya says,—“It is to be known that in case of concealment of partition, the ascertainment of the fact of partition may be made by the evidence of kinsmen (*jnātis*,) relations and witnesses, and by documentary evidence, as well as by disconnected houses and fields.”

(The meaning is:) “It is to be known that in case of concealment,” *i. e.*, denial, “of partition,” made by any one of the separated co-sharers, “the ascertainment,” *i. e.*, the determination “of the fact of partition may be made by the evidence of kinsmen;” *i. e.*, the father’s relations, “relations,” *i. e.*, the maternal uncle and the like,—“and witnesses,” *i. e.*, strangers falling under the definition of a witness: although kinsmen and relations also come under the category of witnesses, still by the rule of ‘the bulls and the beaves’ they are separately mentioned, since they being nearer than outside witnesses, are aware of facts that are incidents of partition, such as separate performance of the *srāddha* and the like (rites.) and are appointed arbitrators to carry out a partition: and “by documentary evidence,” *i. e.*, the instrument of partition: “as well as by disconnected (*yautaka*),” *i. e.*, separated by metes and bounds,—agreeably to the root *yu* which means ‘to unite’ or ‘to disunite’—“houses and fields.”

Náraṇa says,—“If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of agnatic relations, by the deed of partition or by the separato transaction of affairs.”—The term ‘agnatic relations’ is used in order to show that if such (witnesses) be forthcoming, other persons should not be

preferred as witnesses: ‘affairs’ are such as agriculture and the like.

Sankha declares,—“Should a doubt arise on the subject of partition of the wealth of kinsmen, the family may give evidence, if the matter be not known to the agnatic relations.” ‘Family’ means the cognates, such as the maternal uncle; hence it is, that the agnatic relations are prominently set forth by Nárada. The reading, *jnátribhis* or ‘if the eye-witnesses be not known’ (instead of ‘if the matter be not known to agnatic relations’) is not genuine, since it is not found in old manuscripts nor in the commentaries.

The documentary evidence is of greater weight than the testimony of witnesses. This has been dealt with (by us) in the Paribháshá (or that part of this commentary, where the adjective law has been treated).

2. Nárada ordains,—“Gift and acceptance of gift, cattle, food, house, land and attendants, must be considered as distinct among separated brethren, as also cooking, religious ceremony, income and expenditure. Separated, and not unseparated kinsmen may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those by whom such matters are publicly transacted with their co-heirs, are to be known separate even without written evidence.”—‘Religious ceremony’ means, the worship of gods and the like, by reason of the text cited before (ch. IX, § 1, para. 2) namely,—“The worship of gods &c.”,—and by reason of the text of Nárada, namely—“Of undivided brethren, the religious duties are common; after partition, the religious duties also of each of them become separate.”

Vrihaspati says,—“A violent crime, a pledge of immoveable property, and a previous partition among co-sharers may be ascertained by presumptive proof, (if) there are neither writing nor witnesses.”—The particle ‘if’ is understood.—“They who have their income, expenditure and wealth distinct, and have mutual transaction of money-lending and traffic, are undoubtedly separate.”—‘Money-lending’ is, the investment of money for interest; ‘traffic’ is trade; ‘mutual transaction’ means,

when one brother is creditor and another is debtor, one sells and another buys from him : from these and similar facts which cannot be accounted for except by separation, partition is to be inferred.

From the plural number in "such matters" it is not to be supposed that the inference arises only when all these jointly exist ; because the intention is, that the inference arises from all or some of them, and because the text is (not arbitrary but) based upon reason.

3. Where the fact of partition cannot be ascertained by circumstantial evidence, it is to be determined by ordeals or oaths, according as the estate is small or large. It has been set forth in the introductory chapter, that " When the circumstances also fail, it is to be determined by oaths."

4. When, however, no oral evidence is forthcoming, the circumstances are meagre, and neither party wishes to have recourse to ordeals and oaths ; in such a case, Manu says that partition is to be made again, thus,—" When a doubt arises as to the mutual separation of the co-heirs, then re-distribution is to be made by them although residing in different places."

It is to be observed that this is to be done in the same way as in the partition by the re-united co-heirs, after liquidating the debts of all.

As for what Manu says, namely, " Only once may the distribution of shares take place, only once may a maiden be given (in marriage), only once may the same article be gifted (by an owner) : these three may occur but once :" —this applies in the absence of any reason for repetition. The same is true also in the gift of a daughter in marriage, as well as in any other gift.

Thus is finished the determination of the fact of partition in a case of doubt.

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And thus is finished the topic of litigation called Partition of Heritage.

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# **I N D E X.**

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**THE ASIATIC SOCIETY. CALCUTTA**

# I N D E X.

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## A.

	<i>Page</i>
<b>ABANDONMENT</b>	
by husband, of adulterous wife, when allowed,	...     ...     ...     153
<b>ACCEPTANCE</b>	
by donee necessary to complete gift,	...     ...     ...     33
not so according to Dáyabhága,	...     ...     ...     31
<b>ACCOUNT,</b>	
co-heir not liable to, for excess of consumption,	...     ...     247
<b>ACHĀRYA, or preceptor,</b>	
succession of, ...	...     ...     200
<b>ACQUIRER'S DOUBLE SHARE,</b> ...	63—70, 205
<b>ACQUISITION,</b>	
means of — common and special,	...     ...     ...     8
— not a matter of divine authority,	...     ...     ...     17
— known from Sástras alone according to some,	...     ...     ...     7
father's double share in his own,	...     ...     ...     63
father not entitled to two shares of son's,	...     ...     ...     64—70
without detriment to joint stock, not partible,	...     ...     ...     248
by a re-united co-heir, partible, ...	...     ...     ...     205
re-united co-heir entitled to two shares of his,	...     ...     ...     ib.
<b>ADDICTED TO VICE,</b> excluded from inheritance,	...     ...     ...     256
<b>ADHIVEDANIKA,</b> or gift on supersession,	...     ...     ...     221
<b>ADHYAGNI,</b> or presents before fire, ...	...     ...     ...     222
<b>ADHYAVAHANIKA,</b> or present at bridal procession, ...	...     ...     ...     ib.
<b>ADOPTED SON,</b> or the <i>dattaka</i> or given son, ...	...     ...     ...     100
described, ...	...     ...     ...     115
an only son shall not be given or taken as,	...     ...     ...     ib.
the eldest son, ...	...     ...     ...     117
cannot be taken by woman without husband's assent,	...     ...     ...     115
one having a son cannot authorize his wife to take an,	...     ...     ...     ib.
a step-son is an, to a woman, ...	...     ...     ...     116
may be taken by a woman for her own sake with the assent of	
husband, ...	...     ...     ...     ib.
may be taken by a widow with the assent of husband's kinsmen,	
<i>ib.</i>	
mode of taking an, ...	...     ...     ...     117
becomes a kinsman or member of the <i>gotra</i> of the adoptive father,	126
is entitled to a quarter share, if an <i>aurusa</i> son be subsequently	
born, ...	...     ...     ...     124

<b>ADOPTED SON,—(continued).</b>	<i>Page</i>
may inherit from <i>sapindas</i> and <i>samanodakas</i> of adoptive father in default of near heirs, ... ... ...	126
may do so if endued with good qualities or according to local custom, ...	127
a child of inferior caste may be, ... ...	117
<b>ADOPTION,</b>	
sons by, ... ...	100—130
involves the idea of father's proprietary right over wife and son, <i>ib.</i>	
<b>ADULTEROUS WIFE</b>	
not entitled to succeed to husband, ... ... ...	133, 152
not entitled to maintenance from heirs to undivided husband, ...	174
not entitled to maintenance, when husband excluded from inheritance, ... ... ...	255
if disposed to perform penance, is entitled to maintenance from husband, ... ... ...	153
may be abandoned by husband, if perverse, ... ...	<i>ib.</i>
<b>ADULTERY,</b>	
does not disqualify mother for inheriting, ... ... ...	191
subsequent, does not divest right, ...	... 253
See <i>Adulterous Wife.</i>	
<b>AGNATES</b> , preferred to cognates as heirs, ... ...	... 200
<b>AFFECTIONATE GIFT BY HUSBAND</b> ,	
joint succession of son and daughter to, ...	... 229
<b>AFFIANCED</b> , meaning of, ... ...	... 106
<b>ALIENATION</b> ,	
father may make, of moveables, ... ...	... ... 16
father cannot make, of immoveables ancestral or self-acquired, ...	17
father may do so with son's consent, or for legal necessity, ...	87
any member may make, for legal necessity, ... ...	<i>ib.</i>
by widow, of husband's estate, for legal necessity, valid, ...	141
by wife, of <i>stridhan</i> , independently of husband, not allowed as a general rule, ... ...	224
by wife, of some kinds of <i>stridhan</i> , independently of husband, allowed, ... ...	<i>ib.</i>
by wife, of property given by husband, allowed in case of moveables, ... ...	225
by husband, of wife's property, valid in distress, ... ...	226
<b>ANCESTOR WORSHIP</b> .	
should be performed by descendants and heirs, ...	90, 256
<b>ANCESTRAL PROPERTY</b> .	
right of father and son, co-equal in, ...	... 16, 65 <i>et seq.</i>
partition of, may take place by son's choice, ...	... ... 49
immoveable, cannot be alienated by father, ...	... ... 17
except with son's consent, or for legal necessity, ...	... ... 87
son's share in, not <i>legally</i> liable for father's debts, ...	... ... 154
<b>ANVADHEYA</b> , or gift subsequent, described, ...	... 222
joint succession of sons and daughters to, ...	... ... 228
<b>APAVIDDHA</b> , or deserted son, described, ...	... ... 101
	... ... 119

	Page
APPARELS, not partible, ... ... ... ...	249, 250
APPOINTMENT, to raise issue,	
an ancient custom appears to be based upon the notion of wife's being an article of property, ... ... ...	101-111
disapproved, ... ... ...	143, 148
prohibited in this Kali age, ... ...	61
APPOINTED DAUGHTER'S SON,	100, 102
described, ... ...	102
may mean, appointed daughter herself, ... ...	103
agreement with husband, not necessary to be express,	<i>ib.</i>
succession of, ... ... ...	121 <i>et seq.</i>
ARRSHA, an approved form of marriage, ...	240
ASCERTAINMENT of contested partition,	260-262
by direct evidence, ... ...	260
by circumstantial evidence, ... ...	261
by ordeals and oaths, ... ...	262
ASCETIC, or Yati, succession to the estate of, ...	202
ASURA, a disapproved form of marriage, ...	132, 240
AURASA, or real legitimate son, described,	101
the principal son, ... ...	120
partition by, and subsidiary sons, ...	121 <i>et seq.</i>
AUTHORITY.	
profane, means sensation, perception and inference, ...	8
divine or sacred, means the authority of the Sástras, ...	14
of husband, necessary for adoption by wife, ...	115
of husband's kinsmen, necessary for adoption by a widow, ...	116
B.	
BANDHU,	
or kinsman (sec. 19), means a member of the <i>gotra</i> , ...	126, 142
means a cognate (Yájnavalkya's text), ...	131
in the sense of a cognate means <i>sapindas</i> , i. e., blood relations, belonging to a different <i>gotra</i> , ... ...	156, 199
succession and classification of, ... ...	200
enumeration of, illustrative, ...	<i>ib.</i>
of woman, means blood relation, ...	242
succession of, to woman's property, ...	<i>ib.</i>
BARREN DAUGHTER,	
is not disqualified to inherit, ...	178
as such, not entitled to preference, ...	181
BASTARD SON by a female slave,	
of a Sudra is entitled to half share, ...	130
when to whole estate, ...	<i>ib.</i>
of a twice-born, entitled to maintenance only, ...	<i>ib.</i>
BLIND, excluded from inheritance, ...	252
BRAHMA, an approved form of marriage, ...	240
BRAHMANAS,	
inherit from a Bráhmana in default of all heirs, not the king, ...	201

<b>BROTHER,</b>	<i>Page</i>
and other co-heirs succeed to a member of joint family in default of male issue, ... ... ... 154, 164	
succession of, to a separated brother, ... ... ... 192	
uterine, succeeds first, ... ... ... 193	
half, after him, ... ... ... 194	
re-united, succeeds in default of male issue, ... ... ... 205	
re-united uterine, succeeds first, ... ... ... 206	
re-united half, and unassociated whole, succeed together, ... <i>ib.</i>	
unassociated half, succeeds in preference to wife, ... ... ... 214	
succession of uterine, to maiden's property, ... ... ... 240	
to sister's property, ... ... ... 242	
marriage and investiture with sacred thread, of, charges on estate, 81	
<b>BROTHER'S SON,</b>	
if joint, succeeds in preference to wife, ... ... ... 154, 164	
succession of, to separated uncle, ... ... ... 192	
uterine, preferred to half, ... ... ... 193	
if re-united, succeeds in preference to wife, ... ... ... 205	
equal to son in conferring spiritual benefit, ... ... ... 157	
<b>C.</b>	
<b>CAPACITY for conferring spiritual benefit,</b>	
does not determine succession to joint estate, ... ... ... 91	
determines priority of succession to separate person, ... ... ... <i>ib.</i>	
is equal, of son, grandson and great-grandson, ... ... ... 155	
also brother's son, ... ... ... 157	
<b>CASTE,</b>	
intermarriage of a man of superior, with a woman of inferior, allowed, ... ... ... 95, 132	
intermarriage of a man of inferior, with a woman of superior, not invalid, ... ... ... 255	
adoption of a child of inferior, allowed, ... ... ... 117	
a wife of a superior, succeeds first, ... ... ... 132, 152	
<b>CAUSE OF HERITABLE RIGHT,</b>	
to unobstructed heritage, is birth, ... ... ... 3	
to obstructed heritage, is extinction of right, ... ... ... 4	
<b>CHARGES ON INHERITANCE,</b>	
debt of deceased owner, ... ... ... ... 154	
initiation of co-heir, ... ... ... ... 81	
marriage of co-heir, ... ... ... ... <i>ib.</i>	
marriage of daughter, ... ... ... ... 81, 219	
sister, ... ... ... ... 53	
maintenance of widow, ... ... ... ... 153, 174, 219	
<b>CHASTITY,</b>	
condition of wife's succession, ... ... ... ... 153, 174,	
not a condition of mother's succession, ... ... ... ... 191	
condition of widow's right to maintenance against husband's co-heirs, ... ... ... ... 153, 174	
not a condition of wife's right to maintenance, ... ... ... ... 153	

<b>CHASTITY,—(continued).</b>	<i>Page</i>
by subsequent want of, right to receive maintenance from husband's co-heirs, forfeited,	... 174
——— widow's estate is not divested,	... 253
<b>COGNATES or BANDHUS,</b>	
are <i>sapindas</i> , in the sense of blood relations, of a different <i>gotra</i> ,	199
See <i>Bandhu</i> .	
<b>CO-HEIR,</b>	
nature of ——'s right in joint property, ...	... ... 42
cannot alienate his interest in joint property, ...	... ... 87
can alienate joint property for legal necessity, ...	... ... <i>ib.</i>
is not liable for excess of consumption, ...	... ... 247
can alienate his share after partition, ...	... ... 257
mother is a, ...	... ... ... ... 168
<b>CONCEALED PROPERTY</b> , distribution of, ...	... ... 245
<b>CONCEALMENT OF EFFECTS</b> , by a co-heir, is theft,	... ... <i>ib.</i>
<b>CONFICTING TEXTS</b> ,	
to be reconciled by referring them to distinct cases,	... ... 190
<b>CONSANGUINITY</b> ,	
is the principle of inheritance, ...	... ... ... ... 1, 3
nearness of, determines succession, ...	... ... 185, 194, 195, 200
<b>CONSENT</b> ,	
of sons necessary for alienation of immoveable property,	... ... 87
<b>CONSUMMATION</b> ,	
re-marriage of widow before, ...	... ... ... ... 107
<b>CONTESTED PARTITION</b> , determination of,	... ... 260
by direct evidence, ...	... ... ... ... <i>ib.</i>
by circumstantial evidence, ...	... ... ... ... 261
by ordeals and oaths, ...	... ... ... ... 262
re-partition, ...	... ... ... ... <i>ib.</i>
<b>CO-PARCENER</b> . See <i>Co-heir</i> .	
<b>CO-SHARER</b> . See <i>Co-heir</i> .	
<b>COUSINS</b> ,	
may be re-united, ...	... ... ... ... 169
<b>COVERTURE</b> ,	
woman's power over her <i>stridhan</i> during, ...	... ... ... ... 224
<b>CRITERION</b> of order of succession,	
is nearness of propinquity, ...	... ... 185, 194, 195, 200
also capacity for conferring spiritual benefit, ...	... ... 91
<b>CROWN</b> ,	
estate of deceased, in default of heirs escheats to, ...	... ... 201
——— a Bráhmaṇa does not, ...	... ... ... ... <i>ib.</i>
<b>CUSTOM or USAGE</b> ,	
local, may be taken into consideration for determining doubtful questions, ...	... ... ... ... 127
has force of law, ...	... ... ... ... 168

	Page
D.	
DATTAKA, or son given. See <i>Adopted Son</i> .	
DAUGHTER,	
maiden, entitled to quarter share on partition, ...	81
succession of, to estate of separated father, ...	176
order of succession amongst different kinds of, ...	181
succession of, to <i>stridhan</i> , ...	228
order of succession, ...	231
marriage and maintenance of maiden, charge on inheritance,	81, 219
DAUGHTER-IN-LAW,	
not heir to mother-in-law, ...	244
entitled to maintenance from mother-in-law's estate,	ib.
DAUGHTER'S DAUGHTER,	
succession of, to <i>stridhan</i> , ...	238
DAUGHTER'S MARRIAGE,	
charge on inheritance, ...	81, 219
DAUGHTER'S SON,	
succession of, to separated grandfather, ...	183
to <i>stridhan</i> , ...	238
<i>per stirpes</i> , ...	241
DAYADA,	
means a co-heir, ...	140
— partaker of oblations, divided or undivided, ...	155
— heir to the same <i>gotra</i> , ...	126
DEAF,	
excluded from inheritance, ...	253
DEATH,	
extinguishes right, ...	4
opens succession to obstructed heritage, ...	ib.
DEBTS,	
moral liability of sons, grandsons and great-grandsons to discharge, 154	
legal liability of heir to discharge, ...	ib.
DEDUCTION specific,	
partition with, ...	53 <i>et seq.</i>
DEED OF PARTITION,	
best evidence of partition, ...	260, 261
DEGRADATION,	
extinguishes right in the absence of penance, ...	37
excludes from inheritance in the absence of penance, ...	253
DESERTED SON,	101, 119
DESERTION,	
by husband, of unchaste wife when allowed, ...	153
DIVESTING OF ESTATE,	
is not caused by subsequent disability, ...	253
DISCIPLE or PUPIL,	
succession of, ...	201, 202

					Page
<b>DISEASE,</b>					
incurable, excludes from inheritance,	...	...	...	...	252
husband may use wife's property during,	...	...	...	...	227
<b>DISQUALIFICATION,</b>					
to inherit arises from physical or moral defect,	...	...	...	...	252
<b>DISSIPATOR OF WEALTH,</b>					
a woman who is, not entitled to <i>stridhan</i> ,	...	...	...	...	
<b>DISTRESS,</b>					
in, husband may take wife's property,	...	...	...	...	226
in extreme, theft allowed, ...	...	...	...	...	26
<b>DISTRIBUTION,</b>					
by father's choice of his property in two modes only,	...	...	...	...	53
equal, of father's property, by sons' choice, ...	...	...	...	...	60
of grandfather's property, must be equal,	...	...	...	...	65
equal, is preferable in all cases, ...	...	...	...	...	70
<b>DIVINE</b> or sacred authority,					
is the authority of the Sástras,	...	...	...	...	14, 25
<b>DIVISION.</b> See <i>Distribution and Partition</i> .					
<b>DOUBLE SHARE,</b>					
of acquirer, ...	...	...	...	...	63 <i>et seq.</i>
of father in self-acquired property,	...	...	...	...	<i>ib.</i>
of acquirer who is re-united, ...	...	...	...	...	205
<b>DUBIOUS PARTITION,</b>					
how ascertained, ...	...	...	...	...	260
<b>DUMB</b> , excluded from inheritance, ...	...	...	...	...	253
<b>DVYĀMUSHYĀYANA,</b>					
or son of two fathers, ...	...	...	...	...	104
<b>DWELLING,</b>					
husband must provide wife with, ...	...	...	...	...	226
<b>E.</b>					
<b>EFFECTS</b> , not liable to partition,	...	...	...	...	248
<b>ELDEST SON,</b>					
may be entitled to specific deduction,	...	...	...	...	53
cannot be given away in adoption,	...	...	...	...	117
<b>ENEMY</b> , to father, not entitled to inherit,	...	...	...	...	252
<b>EUNUCH</b> , not entitled to inherit,	...	...	...	...	<i>ib.</i>
<b>EVIDENCE OF PARTITION,</b>					
deed of partition, ...	...	...	...	...	260
direct, ...	...	...	...	...	<i>ib.</i>
circumstantial, ...	...	...	...	...	261
oaths and ordeals, ...	...	...	...	...	262
<b>EXCLUSION</b> ; from inheritance,	...	...	...	...	252
<b>EXCOMMUNICATED</b> ,					
excluded from inheritance,	...	...	...	...	256
<b>EXPIATION</b> ,					
removes disqualification arising from degradation,	...	...	...	...	37, 253

F.

<b>FAMILY,</b>					
maintenance of, is a legal necessity, ...	...	...	...	...	87
for maintenance of, husband may take wife's property, ...	...	...	...	...	227
<b>FAMINE,</b>					
at a time of, husband may take wife's property, ...	...	...	...	...	<i>ib.</i>
<b>FATHER,</b>					
may alienate ancestral moveable for certain purposes, ...	...	...	...	...	16
cannot alienate immoveable ancestral or self-acquired, ...	...	...	...	...	17
can alienate immoveable with consent of sons or for legal neces- sity, ...	...	...	...	...	87
may distribute his property at his desire, ...	...	...	...	...	49
_____ in two modes only, ...	...	...	...	...	53
may give a share to his wife out of his property, ...	...	...	...	...	57
entitled to two shares of his property, ...	...	...	...	...	63
_____ equal share of ancestral property, ...	...	...	...	...	65
not entitled to two shares of son's acquisition, ...	...	...	...	...	69
succession of, to estate of separated son, ...	...	...	...	...	185
succeeds before unchaste mother, ...	...	...	...	...	191
succession of, to estate of daughter, ...	...	...	...	...	240
<b>FATHER and SON,</b>					
respective rights of, in joint property, ...	...	...	...	...	16, 74, 87
<b>FATHER-IN-LAW,</b>					
when succeeds to daughter-in-law, ...	...	...	...	...	244
<b>FATHER'S CONCUBINES,</b>					
not partible, ...	...	...	...	...	249
<b>FATHER'S GIFTS,</b>					
not partible, ...	...	...	...	...	250, 251
<b>FATHER'S FATHER'S SISTER'S SON,</b>					
is a <i>bandhu</i> and heir, ...	...	...	...	...	200
<b>FATHER'S MATERNAL UNCLE'S SON,</b>					
is a <i>bandhu</i> and heir, ...	...	...	...	...	<i>ib.</i>
<b>FATHER'S MOTHER'S SISTER'S SON,</b>					
is a <i>bandhu</i> and heir, ...	...	...	...	...	<i>ib.</i>
<b>FATHER'S SISTER'S SON,</b>					
is a <i>bandhu</i> and heir, ...	...	...	...	...	<i>ib.</i>
<b>FATHER'S WIVES,</b>					
entitled, according to <i>Mitakshari</i> to shares on partition by stepsons, sonless, entitled to maintenance only, according to the author, ...	...	...	...	...	80
... <i>ib.</i>					
<b>FEELINGS,</b>					
what is repugnant to, though legal, should not be practised, ...	...	...	...	...	61
preservation of good, of co-heirs after separation, should be look- ed to, ...	...	...	...	...	247
<b>FELLOW STUDENT,</b>					
succession of, ...	...	...	...	...	201

**FEMALES,**

	<i>Page</i>
as a general rule, excluded from inheritance, but may inherit when expressly allowed, ...	174, 198, 244
are <i>sapindas</i> , in the sense of allied by funeral oblations, of husband and of husband's <i>sapindas</i> , ...	195, 244
that get shares on partition are co-heirs and may be re-united, ...	168
See <i>Wife</i> and <i>Woman's Property</i> .	

**G.****GAINS OF SCIENCE,**

defined and when not partible, ...	...	...	...	248
------------------------------------	-----	-----	-----	-----

**GANDHARVA**, a form of marriage, ...

...	...	...	240
-----	-----	-----	-----

**GENTILES.** See *Gotrajās*.**GIFT,**

relinquishment by donor not sufficient to complete, ...	...	...	82
---	-----	-----	----

acceptance by donee completes, ...	...	...	...	88
------------------------------------	-----	-----	-----	----

may be revoked, ...	...	...	...	262
---------------------	-----	-----	-----	-----

of sons and daughters, ...	...	...	...	65
----------------------------	-----	-----	-----	----

**GIFT SUBSEQUENT.** See *Anvādhēya*.**GOTRAJAS** or **GENTILES**,

are those that are descended in the male line from a common male ancestor, ...	...	...	...	199
--	-----	-----	-----	-----

includes females admitted into the <i>gotra</i> by marriage, ...	...	...	196
--	-----	-----	-----

— subsidiary sons admitted into <i>gotra</i> by adoption, ...	...	...	126
---	-----	-----	-----

are divided into <i>sapindas</i> and <i>samanadakas</i> , ...	...	196, 199
---	-----	----------

**GRANDFATHER**, paternal,

succession of, ...	...	...	...	199
--------------------	-----	-----	-----	-----

**GRANDFATHER'S** descendants,

succession of, ...	...	...	...	ib.
--------------------	-----	-----	-----	-----

**GRANDFATHER'S** property. See *Ancestral Property*.**GRANDMOTHER**, paternal,

succession of, ...	...	...	...	196
--------------------	-----	-----	-----	-----

entitled to a share on partition, ...	...	...	...	79
---------------------------------------	-----	-----	-----	----

**GRANDSONS**,

acquire right by birth, ...	...	...	...	3, 90
-----------------------------	-----	-----	-----	-------

by different fathers, take <i>per stirpes</i> , ...	...	...	...	72
---	-----	-----	-----	----

succession of, to <i>stridhan</i> , ...	...	...	...	238
---	-----	-----	-----	-----

**GREAT-GRANDFATHER**,

succession of, ...	...	...	...	199
--------------------	-----	-----	-----	-----

**GREAT-GRANDFATHER'S** descendants,

succession of, ...	...	...	...	ib.
--------------------	-----	-----	-----	-----

**GREAT-GRANDMOTHER**,

is silently introduced as heir, there being no express text for her	...	...	...	...
---	-----	-----	-----	-----

succession, ...	...	...	...	...
-----------------	-----	-----	-----	-----

See *Females*.

**GREAT-GRANDSONS**,

acquire right by birth, ...	...	...	...	3, 90
-----------------------------	-----	-----	-----	-------

by different grandfathers take <i>per stirpes</i> , ...	...	...	...	72
---	-----	-----	-----	----

	Page
GUARDIAN, father has the preferable right to be, ...	... 93
GUDHAJÀ, or secret-born son, a subsidiary son, ...	... 111
H.	
HEIRS, relatives are, ...	... 1, 2
to a separated person enumerated, ...	... 131
order amongst, determined by nearness of propinquity, 185, 194,	
	195, 200

H.

**HEIRS,**  
 relatives are, ... ... '... ... 1, 2  
 to a separated person enumerated, ... ... 131  
 order amongst, determined by nearness of propinquity, 185, 194,  
 195, 200

HERITAGE,

defined, ...	...	...	...	...	...	2
is of two sorts, obstructed and unobstructed,	...	...	...	...	...	3
two sorts of. explained.	...	...	...	...	...	4

## **THE HERMIT, OR VĀMAPRASTHA.**

<sup>202</sup>succession to the estate of.

## HUSBAND and WIFE.

**WIFE,** relation of, arises on completion of ceremony of marriage, ... 107  
**unity of,** ... 230

as between

<b>SBAND,</b>				
must provide wife with food, raiment and dwelling;				... 226
permission of, for the disposal of property by wife,			...	... 224
power of, over <i>stridhan</i> in distress, ...	...			... 226
succession of,	...	...	...	... 240
must refund <i>stridhan</i> taken, when rich enough to pay.				227

1

<b>IDIOT</b> , excluded from inheritance, ...	...	...	...	252
<b>ILLEGITIMATE</b> son by a female slave, of a Sudra, entitled to half share, or to whole property, of a twice-born, entitled to maintenance only,	...	...	130	<i>ib.</i>
<b>ILLNESS</b> , during, husband may take wife's property,	...	...	227	
<b>IMMOVEABLE PROPERTY</b> ,				
right to, not absolute before birth of son,	...	...	17	
joint, not saleable by a co-sharer, ...	...	...	87	
saleable by a co-sharer after partition, ...	...	...	257	
given by husband, not alienable by wife,	...	...	225	
given by parents to daughter, goes to her brother in default of issue,	...	...	242	
<b>IMPOTENT</b> , excluded from inheritance, ...	...	...	252	
can marry, ...	...	...	255	
<b>INCURABLE DISEASE</b> excludes from inheritance, ...	...	...	252	

<b>INFANT,</b>	<i>Page</i>
co-sharer's being, no bar to partition, ...	... 89
share of, to be entrusted to guardian, ...	... 90
conceived before partition, but born after, entitled to a share by re-opening partition, ...	... 92, 93
conceived after partition, entitled to father's share, ...	... 92
<b>INHERITANCE,</b>	
vests in relations, ...	... 1-4
from an unseparated person, vests by survivorship, ...	... 165
from a separated person, ...	... 131-201
from certain religious persons, ...	... 202, 203
from a re-united person, ...	... 204-219
from a woman, ...	... 228-244
<b>INITIATION,</b>	
means, the performance of the <i>Sanskāras</i> or sacraments including marriage, ...	... 81
of brothers and sisters, charge on inheritance, ...	... <i>ib.</i>
<b>INSANE</b> , excluded from inheritance, ...	... 252
<b>INTERMARRIAGE,</b>	
of a man of superior class with a woman of inferior class allowed, ...	... 95 <i>et seq.</i>
of a man of inferior class with a woman of superior class, ...	... 255
<b>INVESTITURE</b> with the sacred thread, an initiation, of brother, charge on inheritance, ...	... 81
impotent, &c., are not fit for, ...	... 255
<b>ISSUE</b> , male, includes grandson and great-grandson, ...	... 154

**J.**

<b>JOINT FAMILY,</b>	
law of succession, as in ch. iii., does not apply to estate of a mem- ber of, ...	... 154
succession by survivorship applies in, ...	... 165
a person may be a member of, with his son, grandson, great- grandson, father, grandfather, great-grandfather and three descendants, in the male line, of father, of grandfather and of great-grandfather, ...	... 72
also with the wives of these, ...	... 165

**K.**

<b>KANIINA</b> , or maiden-born son, a subsidiary son, ...	... 111
<b>KARSHAPANA</b> = $4 \times 20 \times 16 = 1280$ cowries, ...	... 224
(for the purpose of penance, taken to be equal to one rupee.)	
<b>KING</b> ,	
when entitled to take estate, ...	... 201
not entitled to take estate of Brāhmaṇas, ...	... <i>ib.</i>

	Page
<b>KINSMAN,</b>	
means a person of the same <i>gotra</i> , ...	... 126
<b>KRITA</b> , or son bought, a subsidiary son, ...	... 117
<b>KRITRIMA</b> , or son made, a subsidiary son, ...	... 118
<b>KSHETRAJA</b> , or wife's son, a subsidiary son, ...	... 104
<b>L.</b>	
<b>LAME</b> , excluded from inheritance, ...	... 252
<b>LAW</b> , or Smriti,	
consolidates what was observed by primeval men, ...	... 19
positive, is deducible from reason, ...	... 20
positive, is therefore superfluously treated in Sástras, ...	... 20
Sástras on positive, prevent the unthinking from committing mistakes, ...	... <i>ib.</i>
conflict of, to be reconciled by referring them to distinct cases, ...	190
<b>LEGAL NECESSITY</b> ,	
necessary religious ceremony, maintenance of family, &c., constitute, ...	... 16, 87, 141
See <i>Alienation</i> .	
<b>LEPER</b> , excluded from inheritance, ...	... 252
<b>LIMITED INTEREST</b> ,	
wife only has, in husband's estate, ...	... 140
<b>LUNATIC</b> , excluded from inheritance, ...	... 252
<b>M.</b>	
<b>MADMAN</b> , excluded from inheritance, ...	... 252
<b>MAIDEN</b> , daughter,	
succeeds first to separated father, ...	... 181
mother, ...	... 231
entitled to quarter share on partition, ...	... 81
marriage of, charge on inheritance, ...	... 81, 219
maintenance of, ...	... 219
succession to estate of, ...	... 240
<b>MAIDEN-BORN SON</b> . See <i>Kánina</i> .	
<b>MAINTENANCE</b> ,	
of chaste widows, charge on inheritance, ...	153, 174, 219
of maiden daughters, ...	... 219
of illegitimate sons, ...	... 180
of daughter-in-law, from mother-in-law's estate, ...	... 244
of wife, ...	... 226
of unchaste wife, ...	... 153
highest amount of, to be annually given to a female, ...	... 224
<b>MARRIAGE</b> ,	
of unmarried brothers and sisters, charge on inheritance; ...	58, 81
of maiden daughters, charge on inheritance, ...	... 81, 219
of widows, ...	... 114
of persons of different caste, ...	... 95, 255

	<i>Page</i>
<b>MARRIAGE</b> ,—(continued).	
persons competent and bound to give a girl in,	... ... 86
completed on completion of ceremony of, . . .	... ... 107
involves the idea of gift of the girl, ...	... 107, 113, 262
<b>MARRIED DAUGHTER</b> ,	
succession of, to separated father's estate, ...	... ... 181
to mother's estate, ...	... ... 231
<b>MATERNAL UNCLE</b> ,	
is a <i>bandhu</i> , and as such succeeds,	... ... 200
<b>MATERNAL UNCLE'S SON</b> ,	
succeeds as a <i>bandhu</i> , ...	... ... ib.
<b>MINOR</b> ,	
a co-heir's being minor, no bar to partition, ...	... ... 89
share of, to be entrusted to guardian, ...	... ... 90
father is guardian of, ...	... ... 93
<b>MOTIHER</b> ,	
life of, no bar to partition, ...	... ... 74 <i>et seq.</i>
entitled to a share on partition, ...	... ... 79
share of, becomes her <i>stridhan</i> , ...	... ... 92
is a co-heir of sons, ...	... ... 79, 168
but cannot demand partition, ...	... ... 168
may be re-united with sons, ...	... ... 168, 169
succeeds by survivorship, ...	... ... 164
succeeds to a separated son, ...	... ... 185
before father if chaste and virtuous,	... ... 191
after father, if unchaste, ...	... ... ib.
succeeds to a re-united son in preference to wife, ...	... ... 216
succeeds to daughters, ...	... ... 240
right by birth of sons to <i>stridhan</i> of, ...	... ... 228
no portion of property of, during her life, ...	... ... 44, 228
<b>MOTHER'S RELATIONS</b> ,	
succession of, ...	... ... 200
<b>MOVEABLES</b> ,	
ancestral, father's right to, ...	... ... 16, 17
<b>MULTIPLICITY</b> ,	
is a defect in a hypothesis when it involves a greater number of assumptions, ...	... ... 29
<b>N.</b>	
<b>NECESSITY</b> . See <i>Legal Necessity and Alienation</i> .	
<b>NEPHEWS</b> . See <i>Brother's son and Sister's son</i> .	
<b>NISHĀDA</b> .	
is a son of a Brāhmaṇa by a Súdra wife, ...	... ... 97
right of, ...	... ... 98
<b>NIYOGA</b> or appointment to raise issue,	
practice of, censured, ...	... ... 106, 108
may be made by husband or the venerable protectors,	... ... 111
theory that widow accepting, succeeds, is rejected,	... ... 143, 148

	Page
NUPTIAL presents or <i>Yautaka</i> , or presents before nuptial fire described, ... ... ... ... ...	222, 230
succession to, ... ... ... ... ...	230
<b>O.</b>	
OBSEQUIES, performance of, obligatory on heirs, ... ... ...	256
OBSTRUCTED HERITAGE, described, ... ... ... ... ...	3
succession to, ... ... ... ... ...	131—203
ONLY SON, cannot be given in adoption, ... ... ...	115
ORDER OF SUCCESSION, See <i>Succession, Stridhan and Re-union.</i>	
ORNAMENTS, not portable, ... ... ... ...	250
OUTCAST AND HIS SON, excluded from inheritance, if penance be not performed, ... ...	253
not entitled to maintenance, ... ...	254
<b>P.</b>	
PARASAVA or son of a Bráhmaṇa by a Súdra wife, ...	97, 119
PARENTS, succession of, ... ... ...	185
PARTITION, defined, ... ... ... ...	8, 89
does not produce proprietary right, ... ...	42
means also succession or devolution, ...	131, 204, 228, 252
of joint family property, ... ...	44—180
of father's property, when and by whom made, ...	44—53
mode of, by father of his property not arbitrary, ...	58
on, father entitled to two shares of his property, ...	68
on, father's wives may get shares of his property, ...	57
of ancestral property, may be enforced by sons, ...	49
on, of ancestral property father and sons equal sharers, ...	65
on, after father's death mother entitled to a share, ...	79
on, maiden daughters get quarter share, ...	81
may take place at the instance of a single co-heir, ...	89
one born after, entitled to a share, ... ...	92
by sons of different castes, ... ...	95—100
by true and subsidiary sons, ... ...	121—180
of the estate of a separated person, ...	181—208
See <i>Succession.</i>	
of the estate of a re-united person, ... ...	204—219
See <i>Re-union.</i>	
of woman's property, ... ...	228—244
See <i>Stridhanam.</i>	
of concealed property, ... ...	245
cannot be re-opened by one that has assented to it, ...	259
may be revoked when, ... ...	56

	<i>Page</i>
<b>PARTITION OF HERITAGE,</b> means law of succession and inheritance, ...	... 1—4
<b>PARVA OCCASIONS,</b> means days of new moon, half moon, full moon, and transit of the sun from one sign of the zodiac to another, ...	... 90
<b>PARVANA SRADDHA,</b> means ancestor worship on <i>parva</i> occasions.	
<b>PATNI,</b> is a wife wedded in a lawful form of marriage, ...	... 132
succeeds first to the estate of separated husband without male issue, ...	... 132
See <i>Wife</i> .	
<b>PAUNARBHAVA</b> or son of twice married woman described,	... 114
<b>PINDA,</b> means food, body and food offered to a deceased person at a Sraddha ceremony, ...	... 110, 121
<b>POSTHUMOUS SON,</b> born after partition entitled to a share by re-opening partition, ...	94
<b>PRAJAPATYA</b> , an approved form of marriage, ...	... 240
<b>PRECEPTOR,</b> succession of, ...	... 200, 202
<b>PRESENTS,</b> to a woman by relatives, become <i>Stridhan</i> , ...	... 220
by strangers, not absolute <i>Stridhan</i> , ...	... 222
<b>PROFANE AUTHORITY,</b> is, the authority of sensation, perception and inference as distinguished from the authority of the Sástras, ...	... 25
<b>PROPERTY,</b> is a distinct category of its own, ...	... 24
notion of, is not of divine origin, ...	... 17—24
<b>PROPENSITY,</b> nearness of, determines succession, ...	185, 194, 195, 200
<b>PUPIL,</b> succession of, ...	... 201, 202
<b>PUTTRIKAPUTTRA</b> , or appointed daughter's son, a subsidiary son, described, ...	... 102
means either such daughter's son, ...	... ib.
or such daughter herself, ...	... 103
rights of, ...	... 121 <i>et seq.</i>
<b>R.</b>	
<b>RECOVERED PROPERTY,</b> in ancestral, by father, he has the same rights as in self-acquired property, ...	... 73, 74
without detriment to paternal estate, is partible, ...	... 249
<b>RELIGIOUS DUTY,</b> of heirs to perform <i>Sraddha</i> of deceased, ...	... 250

	<i>Page</i>
<b>RELIGIOUS PRINCIPLE,</b>	
is not the principle of inheritance, ... ...	90, 91
determines priority to some extent; ... ...	155—159
according to, son, grandson and great-grandson equal, ...	90, 155
<b>RE-MARRIAGE,</b>	
of widows, ... ...	114
of undefiled widows, explained to refer not to Kali age, ...	61
in the shape of appointment, of undefiled widows, ...	107
<b>REPRESENTATION,</b>	
rule of, ... ...	72
<b>RE-UNION,</b>	
may be formed with one who was a member of the joint family, <i>i. e.</i> , with one male or female who obtains a share on partition, ... ...	168, 205
equal distribution or partition after, ... ...	204
on partition after, a co-heir entitled to two shares only of pro- perty self-acquired during, ...	205
sons re-united or not equally succeed in the first instance to father re-united with his brother &c., ...	205, 217
representation obtains on partition after, ... ...	205
order of succession to the estate of one dying after, without male issue :	
(1) re-united whole brother, (2) re-united half brother and unas- sociated whole brother, (3) re-united mother, (4) re-united father, (5) any other re-united co-parcener, (6) unassociated half brother, (7) unassociated mother, (8) unassociated father, (9) wife, (10) sister, (11) <i>sapindas</i> , (12) <i>samanodakas</i> , (13) <i>bandhus</i> , ... ...	205—207
maintenance of maiden daughter and wife, and marriage of daughter, charges on the estate of one dying after, ...	219
<b>RE-UNITED,</b>	
does not include son of a re-united co-sharer, ...	216
<b>REVERSION,</b>	
allowed after widow alone, the interest of other female heirs absolute, ... ...	140
<b>REVERSIONERS,</b>	
after widow are <i>dáyádas</i> or those who would take joint estate, ...	140
<b>RIGHT,</b>	
to unobstructed heritage, by birth, ... ...	3, 4
to obstructed heritage, by extinction of previous owner's right, ... <i>ib.</i>	
extinguished by death, degradation &c., ...	37
<b>RIVAL WIVES,</b>	
may divide husband's property, ... ...	132
of, she that is married in a lawful form of marriage, succeeds first, ... ...	<i>ib.</i>
of, she that is of the same caste with husband succeeds in pre- ference to one of inferior caste, ... ...	<i>ib.</i>

8.

SACRED AUTHORITY, is the authority of the Sastras,	...	...	14, 25
<b>SAGOTRA,</b>			
means a person descended from a common male ancestor, in the male line, ...	...	105, 196	
includes females affiliated to the <i>gotra</i> by marriage, ...	...	<i>ib.</i>	
includes subsidiary sons, ...	...	126	
divided into <i>sapindas</i> and <i>samānodakas</i> , relationship extends to fourteenth descendant of fourteenth ancestor, or so far as common descent is known, ...	...	199	
<b>SAHODHHA</b> , or son received with a pregnant bride, a subsidiary son,	119		
<b>SAKULYA,</b>			
means a <i>sagotra</i> , ...	...	142, 200	
— a <i>sapinda</i> in the sense of blood relation other than a <i>sapinda</i> in the sense of allied by oblations, ...	...	156	
<b>SALE.</b> See <i>Alienation</i> .			
<b>SAMĀNODAKA,</b>			
is a <i>sagotra</i> other than a <i>sapinda</i> , ...	...	199, 200	
relationship, extends to the fourteenth descendant in the male line of all the ascendants, in the male line, up to the fourteenth in ascent,—barring the <i>sapindas</i> , ...	...	<i>ib.</i>	
or to all those that are recognised to be of common descent in the male line, ...	...	...	<i>ib.</i>
<b>SANSKĀRAS</b> , or initiatory rites, See <i>Initiation</i> .			
<b>SAPINDAS OF A PERSON,</b>			
in the sense of allied by oblations, are his son, grandson, great- grandson, father, grandfather, great-grandfather, and three descendants in the male line of father, of grandfather and of great-grandfather, ...	...	155	
in the sense of blood relations are six descendants, six ascendants in the male line, and six descendants in the male line of each of the six ascendants in the male line, ...	...	199, 200	
blood relations of a different <i>gotra</i> , though literally <i>sapindas</i> are not technically called <i>sapindas</i> but <i>bandhus</i> , ...	...	199	
<b>SASTRAS</b> ,			
proper subject of, is what is beyond the means of human knowledge, ...	...	20	
still, treat of things that are otherwise deducible from reason, ...	...	<i>ib.</i>	
<b>SAUDĀYIKA</b> , or kind gift, a kind of <i>Stridhan</i> , females may independently deal with, ...	...	224	
<b>SELF-ACQUIRED PROPERTY,</b>			
father entitled to two shares of his, ...	...	63	
re-united co-heir entitled to two shares of his, ...	...	205	
when not partible, ...	...	248	

	Page
<b>SEPARATED CO-SHARER,</b>	
rights of, ...	... 257
<b>SISTER,</b>	
uterine, succeeds to re-united brother, ...	... 215
maiden, entitled to quarter share on partition,	... 81
marriage of, charge on inheritance, ...	... 53, 81
<b>SISTER'S SON,</b>	
succession of, to <i>Stridhan</i> , ...	... 243
<b>SLAVE,</b>	
illegitimate son by a female, ...	... 130
<b>SON,</b>	
right of, in property of father, &c. arises by birth, 3, 13—17, 66, 228	
not so, according to Dáyabhága and others, ...	4—13, 31
partition of father's property by choice of, when allowed, ...	... 49
entitled to ancestral property equally with father, ...	... 65
grandson and great-grandson entitled to succeed to separated	
father &c. in the first instance, ...	... 131, 154
to re-united father, &c. in the first instance, ...	205
between a re-united, and one not so, there is no distinction, ...	217
succeeds to certain kinds of mother's property equally with	
daughter, ...	... 228
other properties in default of daughter's issue, ...	238
<b>SONS, true and subsidiary,</b>	... 100—130
1, true legitimate son, or <i>aurasa</i> described, ...	... 101
superior to subsidiary, ...	... 120
2, appointed daughter's son or <i>puttriká-putra</i> , ...	... 102
means either the appointed daughter herself, ...	... 103
or her son, ...	... 102
3, wife's son or <i>kshetraja</i> , ...	... 104
includes <i>Dryāmushyáyana</i> , ...	... ib.
4, secretly begotten in the house or <i>Gúdhhaja</i> , ...	... 111
5, maiden-born or <i>kánina</i> , ...	... ib.
6, son of twice married woman or <i>Paunarbhava</i> , ...	... 114
7, son given or <i>dattaka</i> , ...	... 115
8, son bought or <i>krita</i> , ...	... 117
9, son made or <i>kritrima</i> , ...	... 118
10, son self-given or <i>Scayandatta</i> , ...	... ib.
11, son received with a pregnant bride or <i>sahoddha</i> , ...	... 119
12, deserted son or <i>Apaviddha</i> , ...	... ib.
partition by, ...	... 121
rights of subsidiary, in adopted family, ...	... 126
<b>SON'S SON,</b>	
succeeds with son, ...	... 72, 90, 154, 205
per stirpes, ...	... 72, 205
succession of, to <i>Stridhan</i> , ...	... 243
<b>SON'S SON'S SON,</b>	
succeeds with son and son's son, ...	... 72, 90, 154, 205
per stirpes, ...	... 72
succession of, to <i>Stridhan</i> , ...	... 243

	<i>Page</i>
<b>SON'S WIFE,</b>	
is a <i>sapinda</i> , ...	... 244
not entitled to inherit from mother-in-law, ...	... ... ... ib.
entitled to maintenance, ...	... ... ... ib.
<b>SPECIFIC DEDUCTIONS,</b>	
partition with, ...	... ... ... ... 53
<b>SPIRITUAL BENEFIT,</b>	
not the principle of inheritance, ...	... ... 90, 91
determines to a certain extent, priority, ...	... ... 90, 91, 155
<b>SPIRITUAL BROTHER,</b>	
succession of, ...	... ... ... ... 202
<b>SRADDHA, is a ceremony in honor of deceased,</b>	
<b>STEP-BROTHER,</b>	
succession of, ...	... ... ... ... 194
<b>STEP-BROTHER'S SON,</b>	
succession of, ...	... ... ... ... 195
<b>STEP-DAUGHTER,</b>	
succession of, ...	... ... ... ... 234
<b>STEP-MOTHER,</b>	
entitled to a share on partition, agreeably to <i>Mitakshari</i> , ...	... 80
— to maintenance only according to author, ...	... ib.
<b>STEP-SON,</b>	
is like an adopted son, ...	... ... ... ... 116
succeeds to step-mother, ...	... ... ... ... 243
son and son's son of, succeed, ...	... ... ... ... ib.
<b>STRYDHAN, or woman's property,</b>	
described, ...	... ... ... 220—224
bears no technical meaning, ...	... ... ... 221
no power of disposal of, without husband's permission, ...	... ... 224
excepting certain kinds, ...	... ... ib.
immovable given by husband not absolute, ...	... ... ... 225
male members have no power over, ...	... ... ... ib.
husband may take, in distress, ...	... ... ... 226
taken by husband, when recoverable, ...	... ... ... 227
<b>SUCCESSION TO,</b>	... 228—244
to gift subsequent and affectionate gift by husband, son and daughter jointly succeed, ...	... ... ... ... 228
to <i>yautaka</i> ,	
maiden daughter succeeds, ...	... ... ... 230
in her default, husband succeeds, ...	... ... ... 235, 236
to other kinds of,	
(1) maiden daughter, (2) unprovided married daughter,	
(3) provided married daughter, (4) widowed daughter, ...	231
(5) daughter's daughters in the same order as daughters,	
(6) daughter's son, ...	... 238, 241
(7) son, (8) son's son, (9) son's son's son, ...	... 243

<b>STRIDHAN</b> ,—(continued).	<i>Page</i>
(10) step-son, (11) his son, (12) his grandson, ...	243
(13) husband, ...	239
other heirs, ...	239—244
what is given by parents after marriage goes to brothers in default of issue, ...	242
<i>sulka</i> goes to brother, ...	<i>ib.</i>
gift by <i>bandhu</i> goes to <i>bandhu</i> in default of issue, ...	<i>ib.</i>
<b>STUDENT</b> ,	
lifelong, succession to estate of, ...	202
<b>SUCCESSION</b> to estate of a re-united person, ...	204—219
See <i>Re-union</i> .	
<b>SUCCESSION</b> to estate of certain religious persons, ...	202
<b>SUCCESSION</b> to estate of a separated person, ...	131—201
(1) son, grandson and great-grandson, ...	131, 154,
(2) chaste wife, ...	131, <i>et seq.</i>
1, of the same caste, ...	132, 153
2, of inferior caste, ...	<i>ib.</i>
(3) daughters, ...	176
1, maiden, 2, married unprovided, 3, married provided, ...	181
(4) daughter's son, ...	183
(5) parents, ...	185
1, chaste mother, 2, father,	
1, good father, 2, unchaste mother, ...	191
(6) brothers, ...	192
1, uterine, 2, half, ...	193
(7) brother's son, ...	194
1, uterine, 2, half, ...	195
(8) grandmother, ...	196
(9) grandfather, (10) paternal uncle, (11) paternal uncle's son, (12) paternal great-grandmother, (13) great-grandfather, (14) grand uncle, (15) grand uncle's son, (16) nearest <i>sapinda</i> , (17) nearest <i>samanodaka</i> , ...	199
(18) nearest <i>bandhu</i> , (19) preceptor, ...	200
(20) pupil, (21) fellow student, (22) king or <i>Brahmanas</i> , ...	201
<b>SUCCESSION TO STRIDHAN</b> , ...	228—244
See <i>Stridhan</i> .	
<b>SUDRAS</b> ,	
inferior position of, ...	121, 130
<b>SULKA</b> ,	
defined, ...	228
goes to brother, ...	242
<b>SUPERCESSION</b> ,	
on, a wife entitled to compensation, ...	224
<b>SUPERFLUOUS PRECEPT</b> , or injunction, is a text of <i>Sástras</i> , declaring what is deducible from profane authority, or from another text, ...	5
<b>SURVIVORSHIP</b> , ...	164

## T.

## THEFT,

concealment by co-heir of joint property is, ... ... ... 245  
allowed, when, ... ... ... 26

THINGS not liable to partition, ... ... ... 248

## U.

## UNCHASTITY,

excludes widow from inheritance, ... ... ... 183, 154  
subsequent, does not divest, ... ... ... 258  
does not exclude mother, ... ... ... 191  
disentitles widow to maintenance, ... ... ... 174  
— wife of one excluded from inheritance, to maintenance, 255

## UNCLE,

paternal, succession of, ... ... ... 199  
maternal, ———, ... ... ... 200

UNDIVIDED FAMILY. See *Joint Family*.

## UNEQUAL DISTRIBUTION,

of paternal property by father's choice, ... ... 53, 63

## UNINITIATED,

initiation of, charge on inheritance, ... ... ... 81

## UNMARRIED,

brother, sister and daughter, marriage of, ... ... 53, 81, 219  
girl succession to property of, ... ... ... 240

## UNOBSTRUCTED HERITAGE,

defined, ... ... ... ... ... 3, 4  
devolution of, ... ... ... ... ... 131—203

## USAGE,

overrides law, ... ... ... ... ... 61

## V.

## VANAPRASTHA or hermit,

succession to property of, ... ... ... ... ... 202

## W.

## WIDOW,

chaste, succeeds to separated husband, ... ... ... 132, 153  
re-marriage of, ... ... ... ... ... 61, 107, 114  
chaste, entitled to maintenance, ... ... ... ... ... 153  
cannot adopt without consent of husband's kinsmen, ... ... 116  
See *Wife*.

	<i>Page</i>
<b>WIDOWED DAUGHTER</b> without son, entitled to succeed to father, ... ... ... ... 178 as such, not entitled to preference, ... ... ... 181, 231	
<b>WIFE,</b>	
status of, arises on completion of marriage ceremony, 107, 132	
husband has a sort of proprietary right over, ... 105, 113	
husband's son by co-wife is like an adopted son to, ... 116	
can adopt son with husband's permission, ... ... ... <i>ib.</i>	
for her own sake, ... ... ... ... 165	
no partition between husband and, ... ... ... 59, 165	
acquires a sort of peculiar right over husband's property during their joint life, ... ... ... ... 165	
entitled to food, raiment and dwelling from husband, 225, 226	
entitled to share on partition, ... ... ... ... 57	
different castes of, ... ... ... ... 95, 132, 153	
does not succeed to joint husband, ... ... ... 153, 164	
succeeds to separated husband in default of male issue, ... 132, 153	
succeeds to re-united husband when, ... ... ... 214—216	
chastity, condition of succession of, ... ... ... 152, 153	
adulterous, entitled to maintenance from husband if disposed to perform penance, ... ... ... ... 153	
of joint co-heir, entitled to maintenance if chaste, ... 153, 174	
of re-united co-heir entitled to maintenance, ... ... ... 218	
of excluded from inheritance, entitled to maintenance if chaste and not perverse, ... ... ... ... 255	
power of, over <i>stridhan</i> during coverture, ... ... ... 224	
power of husband over ——'s <i>stridhan</i> in distress, ... ... ... 226	
<b>WITNESS,</b>	
best, of partition, are kinsmen, ... ... ... ... 260, 271	
<b>WOMAN'S PROPERTY,</b>	
See <i>Stridhan</i> .	
<b>WORDS IN A PRECEPT,</b>	
cannot signify two meanings, one primary and the other secondary, 79	
<b>WRITING,</b>	
is better than parol evidence, ... ... ... ... 261	
Y.	
<b>YATI or ASCETIC,</b>	
succession to estate of, ... ... ... ... 202	
<b>YAUTAKA,</b>	
described, ... ... ... ... 230	
maiden daughters alone succeed to, ... ... ... ... <i>ib.</i>	
in default of maiden daughter, husband &c. succeed, ... 235, 236	



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The Section on *Vyavahāra* or litigation of the Viramitrodaya is divided into four parts, the third of which describes eighteen topics of litigations, one of these topics being law of inheritance and succession, called *Vibhāga* or *Dāyabhāga*, i.e. partition of inheritance.

The present volume contains the text of the *Vibhāga* portion of the Viramitrodaya with an English translation by a versatile scholar and famous practising advocate of the Calcutta High Court in the late nineteenth century. The publication will prove to be of great research value for the study of the evolution of Hindu law of inheritance and some of the Hindu social problems.